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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1097.

HUBERT B. GATES, PLAINTIFF IN ERROR,

vs.

THE BOSTON AND NEW YORK AIR LINE RAILROAD COMPANY, THE NEW YORK, NEW HAVEN, AND HARTFORD RAILROAD COMPANY, AND ALFRED R. GOODRICH AS TREASURER OF THE STATE OF CONNECTICUT.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

FILED OCTOBER 9, 1886.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

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1 *Plaintiff's Appeal.*

Supreme Court of Errors, Middlesex County, May Term, 1885.

Superior Court, November Term, 1882.

HUBERT B. GATES
vs.
THE BOSTON AND NEW YORK AIR LINE R. R. *et als.*

To the sheriff of the county of Middlesex, his deputy, or either of the constables of the town of Middletown, in said county, and to the sheriff of the county of Fairfield, his deputy, or either of the constables of the town of Bridgeport, in said county, and to the sheriff of New Haven county, his deputy, or either of the constables of the town of New Haven, in said county, Greeting:

By authority of the State of Connecticut you are hereby commanded to summon The Boston and New York Air Line Railroad Company, a corporation under and by virtue of the laws of the State of Connecticut, located and having an office in said town of Middletown, and The New York, New Haven and Hartford Railroad Company, a corporation under and by virtue of the laws of the State of Connecticut, located and having an office in said New Haven, to appear before the superior court to be holden at Middletown, in and for the county of Middlesex, on the second Tuesday of November, 1882, then and there to answer unto Hubert B. Gates, of the town of South Orange, in the State of New Jersey, in a civil action wherein the plaintiff complains and says:

2 1. The New Haven, Middletown and Willimantic Railroad Company were incorporated by the Legislature of this State with power to build and construct a railroad from the city of New Haven to the city of Willimantic, in said State, and to run cars thereon in the transportation of passengers and freight thereon as common carriers, and did so build and construct the same.

2. That in the construction of said railroad and to provide capital therefor said company was authorized, among other things, to issue so-called first-mortgage bonds, payable in twenty years from May 1st, 1869, with interest coupons attached, payable semi-annually, at the rate of seven per cent. per annum, and to secure the same by a mortgage of the franchise of said company, together with its railroad, rolling-stock, depots, and all other estate and property then owned or thereafter acquired by said company, and afterwards said company built and completed said railroad and equipped the same.

3. In pursuance of said authority said company afterwards issued their said bonds to the extent of $3,000,000, and executed their mortgage to the treasurer of the State of Connecticut to secure the same, a copy of which is marked Exhibit A.

4. That prior to May, 1875, the said railroad company had made default in the payment of the interest coupons upon said bonds, and such proceedings were had in the superior court for New Haven county as that the then treasurer of the State of Connecticut obtained a decree of foreclosure upon said mortgage against the said

The New Haven, Middletown and Willimantic Railroad Company and all subsequent encumbrancers; and afterwards, on the 26th day of June, 1875, the legal title to the franchise of said railroad company, its railroad, rails, rolling-stock, depots, and all other of its property used for railroad purposes became vested in said trustee for the benefit of the holders of said bonds and coupons in proportion to their respective holdings of same, and subsequently said trustee took possession of the same under the provisions of said trust deed.

3 5. At the May session of the General Assembly of said State for 1875 sundry persons obtained a charter of the defendant's corporation, The Boston and New York Air Line Railroad Company, a copy of which is marked as Exhibit B, and subsequently, as claimed by the defendants, in pursuance of said charter, said treasurer assigned and conveyed the franchise of said railroad company, and all and singular the several kinds of property and estate so foreclosed and held by him, to the defendants, who received and now hold the same under said conveyance, and the plaintiff claims that said assignment and conveyance is without law and null and void.

6. That at the time of said default of said railroad company and the foreclosure of said mortgage amongst other of said first-mortgage bonds thus issued and secured by said mortgage said New Haven, Middletown and Willimantic Railroad Company had issued and sold certain of these bonds, the same having been lawfully registered and numbered, respectively, No. 813, No. 815, for $1,000 each, and a like bond numbered No. 3512 for $500, with coupons for interest for $35 and $17.50 attached respectively to each for interest, payable on the first days of November and May, for twenty years from May 1st, 1869, amounting in all to $437.50, and which said coupons now are the property of the plaintiff, he being the *bona fide* purchaser and holder thereof for value, as well as of the interest coupons which have accrued since said default and foreclosure.

7. That said Boston and New York Air Line Railroad Company was organized under the provisions of the said charter on the — day of July, 1875, and has since had the entire management of said railroad, its franchise, rolling-stock, and all the estate, fixtures, and appurtenances belonging thereto, the same having been claimed to have been conveyed by the treasurer of the State of Connecticut, by authority granted in the said charter of the defendants, and the title and property thus conveyed is now held, subject to all terms and obligations of said trust mortgage deed.

4 8. That others of the holders of the said bonds and coupons have not surrendered the same for stock in said corporation.

9. That the first obligation of the managers of said trust property, after paying the necessary expenses of said trust, was to pay and discharge the interest coupons of said bonds, and in the order in which the same became due, and that if the first-named defendant's corporation has any title or property in said trust estate it is as a trus-

tee for said purpose among other of the trusts and duties imposed by said deed.

10. That as to the plaintiff as the holder of such bonds and coupons the defendant, the said Boston and New York Air Line Railroad Company, is trustee of said railroad, its franchise, rolling-stock, appurtenances, and the income and avails thereof, and liable to account to this court therefor, and for the amount which a reasonable use thereof would produce as income from the running of the same.

11. That though true it is that said charter of the defendant, the said Boston and New York Air Line Railroad Company, authorized the execution of a mortgage of said franchise and property of said corporation, yet the same is void, except to those who have surrendered their bonds and taken stock under said charter; and, if not void, the said defendant is liable to account to the plaintiff and other holders of said mortgage bonds and coupons who have concurrent interest in said trust property.

12. That in the management of said trust property the defendant, said Boston and New York Air Line Railroad Company, has placed a mortgage of $500,000 thereon; have entered into contracts concerning the running and management of their trains, with a view of crippling its business, and diverting the same from said railroad company; have agreed in said contracts not to run trains except upon such schedules as to trains, fares, and freights as may be assented to by a rival railroad company; have created numerous and unnecessary offices, with large and excessive salaries; have appointed officers not residents of the
5 State; have taken the funds and established their treasury in the city and State of New York; have unlawfully and fraudulently appropriated and paid a large part of the income of said estate as fees and commissions and expenses in the matter of procuring said fraudulent contracts, and have fraudulently diverted the income of said railroad exclusively to the payment of pretended dividends on the preferred stock of the said Boston and New York Air Line Railroad Company, and have never rendered any account of said income to the plaintiff and refuse so to do, and, contrary to the provisions of said trust deed and the rights of the plaintiff, the directors of said The Boston and New York Air Line Railroad Company have approved a contract of lease of said trust property for a period of 99 years from September 30th, 1882, to the New York, New Haven and Hartford Railroad Company, and have issued their call for a meeting of their stockholders with a view to and for the sole purpose of ratifying said contract of lease, and of which said proposed lease Exhibit — is a copy.

13. That said lease is intended to appropriate all the income of said railroad for the period of 99 years exclusively to the owners of the preferred stock to impair and destroy the market and actual value of the plaintiff's said securities and interest in said trust property.

14. That unless restrained by your honorable court said The Boston and New York Air Line Railroad Company will, at its stock-

holders' meeting, vote to validate said lease and ratify the same, and, under color thereof, will deliver over the said railroad and all other property specified under said lease unto the New York, New Haven and Hartford Railroad Company, and thereby cause irreparable injury to said railroad, this plaintiff, and those who have concurrent interest in said security.

15. That the call of said meeting and the agitation of the proposed ratification of said lease by said stockholders and the proposed
holding of said meeting for such purpose have already mate-
6 rially injured and depressed the market value of the plain-
tiff's said securities, and, if held, will irreparably injure the
same.

All of this bill of complaint between paragraphs 2 and 15, inclusive, withdrawn, and amended bill substituted.

The plaintiffs claim :

1. That a receiver of the property, rights, and franchise of said corporation conveyed in said trust shall be appointed, who shall, on giving suitable bond, control, manage, and run the said railroad, subject to the conditions of said mortgage and the terms of said trust.

2. Or that said defendants be removed as such trustee of said estate and some suitable person appointed in their place.

3. That an injunction be granted restraining said corporation from holding said meeting, from voting any ratification of said lease in said complaint described, and from leasing said railroad, as in said complaint set forth, or otherwise making a similar lease of said railroad.

4. An accounting of the receipts and disbursements of said trust estate.

Claim 2 withdrawn.

Hereof fail not to make due and legal service and return.

Bonds sufficient are given hereon, and Samuel L. Warner, as principal, and Harris Warner, as surety, are recognized in the sum of $100 to prosecute.

Dated at Middletown this 16th day of October, A. D. 1882.

S. A. ROBINSON,
Justice of the Peace for Middlesex County.

NEW HAVEN AND FAIRFIELD COUNTIES, *ss :*

NEW HAVEN AND BRIDGEPORT, *October 17th*, 1882.

Then I left a true and attested copy of this writ and complaint with Edward I. Sanford, secretary of the New York, New Haven and Hartford Railroad Company, at said New Haven, and on the same
day I also left a like true and attested copy hereof at the
7 usual place of abode of Thomas L. Watson, secretary of the
Boston and New York Air Line Railroad Company, at said
town of Bridgeport.

Attest: JOHN I. HUTCHINSON,
Sheriff Middlesex County and Sheriff's Deputy in the Counties of New Haven and Fairfield.

Fees:

Two copies	$5 00
Service	24
Three endorsements	48
Travel to serve and return	8 80
	$14 52

Demurrer and Denial of the Boston and New York Air Line Railroad Company.

Superior Court, Middlesex County. November Term, 1882.

HUBERT B. GATES
vs.
THE BOSTON AND NEW YORK AIR LINE RAILROAD COMPANY *et al.*

1. Said defendant denies so much of paragraph twelfth of the complaint as alleges that it has entered into contracts with a view of crippling its business and diverting the same from it, or has agreed not to run trains except upon such schedules as to trains, fares, and freights as may be assented to by a rival railroad company, or has created unnecessary offices, or offices with excessive salaries, or has unlawfully and fraudulently appropriated or paid anything in the matter of procuring any fraudulent contracts, or has fruadulently diverted any of the income of said railroad to any purpose, or has done any other fraudulent act or thing.

8 2. Said defendant demurs to the residue of said complaint because:

First. The plaintiff shows no right to any answer or relief, unless this defendant's charter is, as he alleges it to be, unconstitutional and void, whereas said charter is valid in all particulars.

Second. Even if said charter were unconstitutional the plaintiff has lost any right to object to it, or to any proceedings under it, for that cause, because of his laches in not asserting his rights earlier, over seven years having passed since this defendant was organized under said charter and received a deed of said foreclosed premises from the State treasurer and claimed and exercised absolute ownership thereunder, for which laches no excuse is shown.

Third. Said complaint is inconsistent with itself, inasmuch as it both alleges that said mortgage of $500,000 placed on said premises by this defendant is void, and yet asks an account of the moneys derived therefrom, and inasmuch as it further alleges that the deed of the State treasurer to this defendant in 1875 was void, and yet seeks to hold this defendant accountable as the trustee of an express trust thereunder, under the terms of the original mortgage deed of 1869.

Fourth. Said complaint sets forth in one count three separate and distinct causes of action, namely: one for an injunction against a proposed unlawful lease, to prevent both the defendants from executing the same, and one for an accounting by this defendant alone of the receipts and disbursements of certain estate in its possession, and one for the removal of this defendant from the position of trustee of said estate, certain of which claims are upon contract and other of them for injuries to property, and which claims do not arise out of the same transaction or transactions connected with the same subject of action, and all of which do not affect all the parties to the action.

By SIMEON E. BALDWIN,
Its Attorney.

8½ *Answer of the New York, New Haven and Hartford R. R. Co.*

Superior Court, Middlesex County. November Term, 1882.

H. B. GATES
vs.
BOSTON & NEW YORK AIR LINE R. R. Co. *et al.*

The defendant, The New York, New Haven and Hartford R. R. Co., answer to the complaint that they have no knowledge of the truth of the averments of the complaint, and, therefore, deny them.

N. Y., N. H. & H. R. R. CO.,
By HENRY C. ROBINSON.

9 Superior Court, Middlesex County, February Term, 1883.

HUBERT B. GATES
vs.
THE BOSTON AND NEW YORK AIR LINE RAILROAD COMPANY and
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

To the sheriff of the county of Hartford, his deputy, or either of the constables of the town of Hartford, within said county of Hartford, and to the sheriff of the county of Tolland, his deputy, or either of the constables of the town of Vernon, within said Tolland county, Greeting:

By authority of the State of Connecticut you are hereby commanded to summon Alfred R. Goodrich, of said town of Vernon, as he is treasurer of the State of Connecticut, to appear on or before the 3rd Tuesday of April, A. D. 1883, before the superior court to be held at Haddam, within and for said county of Middlesex, at its April term, 1883, there and then to answer to the foregoing complaint of Hubert B. Gates, pursuant to the foregoing order of court.

Hereof fail not, but make due service and return.

Dated at Middletown, March 2nd, 1883.

FREDERICK VINAL,
Ass't Clerk.

Order to Cite in Alfred R. Goodrich, Treasurer of Connecticut, as Codefendant.

Superior Court, Middlesex county. February Term, 1883.

HUBERT B. GATES
vs.
THE BOSTON AND NEW YORK AIR LINE RAILROAD COMPANY and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

10 It appearing to the court that Alfred R. Goodrich, of Vernon, as he is treasurer of the State of Connecticut, ought to be joined as codefendant in the above-entitled cause, it is hereby ordered that the plaintiff amend his writ and complaint by adding said Alfred R. Goodrich, treasurer of Connecticut, as codefendant, and summon him to appear before this court on or before the 3rd Tuesday of April, 1883, to answer to said complaint.

By order of court.

CHAS. G. R. VINAL, *Clerk.*

Motion to Cite in Alfred R. Goodrich, Treasurer of the State of Connecticut.

Superior Court, Middlesex County. February Term, 1883.

HUBERT B. GATES
vs.
THE BOSTON AND NEW YORK AIR LINE RAILROAD COMPANY and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

The plaintiff says that Alfred R. Goodrich, of Vernon, is now treasurer of the State of Connecticut, and as such he is trustee under the mortgage set forth in said complaint and interested in the subject-matter and event of the suit.

Wherefore the plaintiff moves that he may [be] allowed to amend his complaint by inserting the name of said Alfred R. Goodrich, treasurer aforesaid, as codefendant in said complaint.

S. L. WARNER AND
S. A. ROBINSON,
Attorneys for Plaintiff.

Amendment Filed and Allowed March 2, 1883.

11 2. That in the construction of said railroad, and to provide capital therefor, said company was authorized, among other things, to issue so-called first-mortgage bonds, payable in twenty years from May 1st, 1869, with interest coupons attached, payable semi-annually at the rate of seven per cent. per annum, and to secure the same by a mortgage of the franchise of said company, together with its railroad, rolling-stock, depots, and all other estate and property then owned or thereafter acquired by said company; and afterwards said company built and completed said railroad and equipped the same.

3. In pursuance of said authority said company afterwards issued their said bonds to the extent of $3,000,000 and executed their mortgage to the treasurer of the State of Connecticut to secure the same, a copy of which is marked Exhibit A.

4. That prior to May, 1875, the said railroad company had made default in payment of the interest coupons upon said bonds, and that afterwards, to wit, on or about June 26th of the same year, William E. Raymond, then the treasurer of the State, took the possession of said railroad, its stock, franchise, and all estate appertaining thereto, and held the same under the provisions of said trust deed as the trustee therein mentioned.

5. On the 8th day of July, 1875, the said William E. Raymond, in consideration of the sum of two hundred dollars, expressly agreed to be in compensation for his services as such trustee, by deed of that date, fraudulently and unlawfully conveyed said railroad, its stock, property, and franchise, to the defendants, the said Boston and New York Air Line Railroad Company, who received the same with full knowledge of the illegality of said transfer, and since said pretended transfer the said Raymond, as such trustee, and his successors in said office have absolutely neglected and refused to execute any of the duties of said trusteeship and abstained from any interference with said trust property.

6. That at the time of said default of said railroad company and the foreclosure of said mortgage amongst other of said first-mortgage bonds thus issued and secured by said mortgage said New Haven, Middletown and Willimantic Railroad Company had issued and
sold certain of these bonds, the same having been lawfully
12 registered and numbered respectively: One for $1,000, numbered 813; one for the same amount, numbered 815, and one for $500, numbered 3512, with coupons for interest for $35 and $17.50 attached respectively to each for interest, payable on the first days of November and May, for twenty years from May 1st, 1869, and which said bonds, with the coupons thereto attached, are now the property of the plaintiff, he having purchased the same for value.

7. The defendants, the Boston and New York Air Line Railroad Company, now fraudulently claim that by virtue of said conveyance they have become and now are the absolute owners of all of said property described in said mortgage deed, and fraudulently deny that the plaintiff has now any interest therein under and by virtue of said trust deed, and with like fraudulent intent claim the sole right to run and manage said railroad and its appurtenances, and to contract with others for the running thereof for a period of 99 years and to lease the same for said term, and with like fraudulent intent have entered into a contract with the defendants, the New York, New Haven and Hartford Railroad Company, for the running of the same for said term, and therein have agreed to run and manage said railroad only upon such schedules as to time, fares, and freights as said The New York, New Haven and Hartford Railroad Company might thereafter agree to, and with like fraudulent intent and with like intent to deprive the plaintiff wholly of his interest in said

mortgaged premises the directors of said Boston and New York Air Line Railroad Company have approved a contract of lease of said trust property for a period of ninety-nine years to said The New York, New Haven and Hartford Railroad Company, and have issued a call for a meeting of its stockholddrs with a view to and for the sole purpose of ratifying said contract of lease, of which proposed lease Exhibit "C" is a copy.

8. That at the time when said Raymond took possession of said railroad, and since and at the date hereof, there was and is a large amount of personal estate appertaining to said railroad, con-
13 sisting of cars, rolling-stock, rails, ties, and other personal estate, the exact character and amount of which is to the plaintiff unknown; that no inventory thereof has been taken either by said Raymond or either of the defendants, as required by law, or otherwise, and which said personal estate said defendants, said Boston and New York Air Line Railroad Company, now threaten to deliver and turn over under said proposed lease to said The New York, New Haven and Hartford Railroad Company, to be used by them as their estate, and appropriated as such, and mingled with their other property and confused and lost, and likewise threaten to suffer said lessee to use said railroad and appropriate and apply the income thereof as their own, and to mingle the same with the income of their own other roads without regard to the plaintiff's, to the rights of said bondholders, or the source of said income.

9. That said Boston and New York Air Line Railroad Company claim the power and right to do and perform the acts aforesaid by virtue of the powers granted them in their charter, which said claims are untrue; that said charter was obtained without the knowledge or consent of the plaintiff, and is as to him and all other non-consenting bondholders unconstitutional and void.

10. That said Raymond received none of the income of said trust estate.

11. That The Boston and New York Air Line Railroad Company, since they have been in possession of said mortgaged estate, have received income enough and sufficient in amount to pay the coupons on said $3,000,000 of bonds issued under said mortgage as the same have become due, as is provided in said mortgage, and a large part of which said income has been fraudlently appropriated by said company and said The New York, New Haven and Hartford Railroad Company under the first contract set forth in the seventh paragraph of this complaint, and with like fraudulent intent the defendants now threaten to appropriate said mortgaged property and the income thereof for a period of 99 years to the payment of
14 dividends upon the so-called preferred stock of said The Boston and New York Air Line Railroad Company.

12. The plaintiff's said bonds are not yet due, and all the coupons since the date of May 1st, 1873, are unpaid.

13. The holders of said bonds to the extent of $2,000,000 and upwards, and the exact amount of which is to the plaintiff unknown, have received from the income of said mortgaged property large sums of money which in equity should be charged to them respect-

ively in liquidation of their said coupons, and said bondholders have received pay of coupons to a large amount which have become due subsequently to those of the plaintiff.

All of said acts and doings of the defendants were in pursuance of a conspiracy existing between them to cheat and defraud the plaintiff, and to deprive him of the benefits of his said security and to appropriate the same, in known violation of the rights and the provisions and stipulations of said trust deed, and of which said acts and doings the plaintiff had no knowledge until on or about the date of this complaint.

State of Connecticut, } ss.
Hartford County,

Hartford, *April 5th*, 1883.

There and then I left a true and attested copy of the original bill as amended, applicotion to bring in new parties, order for the same, and summons, with Alfred R. Goodrich, treasurer of the State of Connecticut.

Attest: A. W. SPAULDING,
Sheriff of Hartford County.

Fees:

One copy	$2 50
Service	12
Endorsement	24
Travel	1 70
	$4 56

15 Exhibit A.

First Mortgage of the New Haven, Middletown and Willimantic Railroad Company.

State of Connecticut,
Office of Secretary of State.

This indenture, made the first day of May, in the year one thousand eight hundred and sixty-nine, between the New Haven, Middletown and Willimantic Railroad Company, incorporated by the Legislature of the State of Connecticut, of the first part, and the treasurer of the State of Connecticut (trustee, as hereinafter set forth), of the second part—

Whereas the said company, in pursuance of the powers conferred upon it by its charter and the amendments thereto, has commenced to build its railroad from the city of New Haven to the village of Willimantic, in said State, and has obtained subscriptions to its capital stock to the amount of five hundred thousand dollars, and desires, for the purpose of constructing and equipping said railroad, to borrow further sums of money upon the first-mortgage bonds hereinafter described, and proposes to make and issue such bonds from time to time, pursuant to the power and authority to that effect in said charter contained, to an amount not to exceed at any time

one-half the amount then actually expended for the construction and equipment of said railroad, and not to exceed in the aggregate one million five hundred thousand dollars, without the consent of the town of New Haven, to be given by a vote of a majority of the electors of said town present at a town meeting duly called for that purpose, and not to exceed in any event the total sum of three millions of dollars, such bonds to be in sums of five hundred and one thousand dollars each, and to bear interest at the rate of seven per cent. per annum, and to be sealed with the corporate seal of
16 said company, signed by its president and countersigned by its treasurer, and to have interest coupons attached thereto, and to be duly registered in the office of the comptroller of public accounts of the State of Connecticut before being issued; which bonds are to be in the following form:

No. —. $—.

First-Mortgage Bond. State of Connecticut.

The New Haven, Middletown and Willimantic Railroad Company promises to pay to the treasurer of the State of Connecticut or bearer, twenty years after date, the sum of — dollars for money borrowed, with interest at seven per cent. per annum, payable semi-annually on the first days of November and May in each year on presentation and surrender of the proper annexed coupon.

This bond is part of an issue of bonds secured by a first mortgage to the treasurer of the State of Connecticut upon the railroad of said company and all its property, rights, and franchises under its charter, which issue is not to exceed in amount at any time one-half of the amount then actually expended for the construction and equipment of said railroad, and cannot in any event exceed three millions of dollars.

Said bonds must be registered and certified by the comptroller of public accounts of the State of Connecticut.

Should any of the said interest coupons remain unpaid for six months after presentation and default the principal sum secured hereby shall, at the option of the holder hereof, become due immediately.

This bond may, on request of the holder, be registered in his name on the books of the company, and such registry shall be noted on the bond. It shall thereafter be transferable only by written transfer on the books of the company, unless again made payable to bearer by being transferred to bearer on said books, and such
17 transfer being noted on the bond. Payment of interest to the holder of the proper coupon shall discharge the company in all cases.

In witness whereof this bond has been sealed with the corporate seal of said company and signed by its president and countersigned by its treasurer the first day of May, in the year one thousand eight hundred and sixty-nine.

Countersigned.

——— ———, *Treasurer.*

——— ———, *President,*

This bond is duly registered according to law in the office of the comptroller of public accounts of the State of Connecticut the — day of ——, 18—.

——— ———, *Comptroller.*

And whereas the said company has, by a vote of its stockholders, at a meeting duly called for that purpose, and held at Middletown, on the twenty-second day of February, one thousand eight hundred and sixty-nine, authorized and directed the execution of this mortgage for the purpose of securing the payment of the bonds so to be issued as aforesaid and the interest thereon;

And whereas the said company has caused the route of its said railroad from the city of New Haven to the village of Willimantic to be surveyed and the plans and drawings thereof to be prepared, and has acquired title to portions of the roadway, and has placed the graduation and masonry on said line under contract, and has commenced and is now proceeding with the construction of said railroad:

Now, therefore, this indenture witnesseth that the said company, party of the first part to these presents, in consideration of the premises and to secure the payment of the principal and interest of said bonds so to be issued and duly registered as aforesaid to an amount not to exceed at any time one-half of the amount actually expended
for the construction and equipment of said railroad, and not to
18 exceed in the aggregate one million five hundred thousand
dollars, without the consent of the town of New Haven to be given in the manner hereinbefore mentioned, and not to exceed in any event the total sum of three millions of dollars; and also, for and in consideration of one dollar to said company, duly paid by the party of the second part hereto at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, assigned, transferred, conveyed, and set over, and by these presents doth grant, bargain, sell, alien, assign, transfer, convey, and set over, unto the said party of the second part and unto his successors in said office of treasurer of the State of Connecticut all and singular the railroad of the said party of the first part from the city of New Haven to the village of Willimantic, in the State of Connecticut, as the same is now or may be hereafter located, constructed, or improved, and all the roadway and lands that are or may be included in the location of said railroad or acquired by the said company for the purposes of said railroad within the several points aforesaid, with all and singular the railways, rails, bridges, fences, station-houses, depots, shops, buildings, structures, tools, cars, engines, equipments, machinery, fuel, materials, privileges, appendages, appurtenances, and property, real and personal, which now belong or may at any time hereafter belong to said company and be used as a part of said railroad or be appurtenant thereto or necessary for the construction, operation, or security thereof, and also all the property, rights, and franchises of the said company under its charter and every part thereof, together with the rolls, income, issues, and profits thereof, and all rights to receive the

same and everything necessary for the completion and operation of the road; to have and to hold the said property and premises hereinbefore granted and conveyed unto the said party of the second part and his successors in office as aforesaid, in trust for the person or persons, bodies politic or corporate, who shall from time to time become holders of said bonds so about to be issued by said company, or any of them, subject to the terms and stipulations of said bonds
19 and the provisions of the said charter under which the said
company derives its power, and subject to the possession, control, and management of the directors of said company so long as said company shall well and truly perform all and singular the stipulations of the bonds aforesaid and the covenants of this indenture.

And the said party of the first part, for itself, its successors and assigns, doth covenant and agree with the said party of the second part, his successors and assigns, that until the ensealing and delivery hereof the said party of the first part is well seized and possessed of the above granted premises, and hath full power to grant, assign, and convey the same in manner aforesaid, and that the same are free from all incumbrances, and that it will warrant and defend the same unto the said party of the second part, his successors and assigns, from and against all claims and demands whatsoever; and further, that the said party of the first part, its successors and assigns, will make, execute, and deliver all and singular such further assurances and instruments as shall from time to time be necessary; and the said party of the second part, or his successors or their counsel learned in the law, shall reasonably advise and require, for the better effectuating of the objects and purposes of this trust and mortgage, and of subjecting thereto any and all property, real or personal, which may hereafter be acquired by said company and shall appertain to said railroad or be used in its construction or operation.

And it is further mutually agreed by and between the respective parties hereto that until default shall be made in the payment of the principal or interest of said bonds, or some part thereof, according to their tenor, the party of the first part, its directors and officers, may remain in the quiet and peaceable possession and enjoyment of all the railroad and property, rights and franchises hereinbefore granted and conveyed, and the tolls, earnings, and income to arise therefrom, without any molestation by or from the party of the second part or his successors; but in case the said company
20 should make default in the payment of the interest upon any
of said bonds, after due demand and presentation of the proper coupon for such interest, and such interest should remain unpaid for sixty days after such default, the said party of the second part or his successors may and shall, after the lapse of said sixty days, upon the written request of the holder or holders of one-third in amount of the bonds secured by this mortgage and then outstanding, take actual possession of the said railroad and of all and singular the property and effects, rights, and franchises hereby conveyed and mortgaged or subject to this mortgage, and shall, through

agents to be appointed by him, receive the income and profits of said railroad, for the purposes of the trust hereinbefore declared, defraying out of the same the expenses of the road and its necessary repairs. And if the interest on any of said bonds shall remain due and unpaid for the term of six months after presentation of the proper coupon and default in the payment thereof as aforesaid the principal of each of said bonds on which such default shall have been made shall, at the option of the holders of such bonds respectively, become due and payable immediately.

This conveyance is upon the express condition and limitation that upon the payment of the principal and interest of each and every of the said bonds and the discharge of the said company from all liability thereupon the estate and trust herein and hereby created in said grantee and trustee shall cease and be null and void, and the premises hereby granted and conveyed and all property which shall have been subjected to this mortgage shall be divested from said grantee and immediately be reinvested in law and in fact in said grantor without any entry or other act to be by said grantor or said grantee made or performed.

And it is further mutually agreed by and between the parties to these presents that in case at any time hereafter the holder of any or either of said bonds should desire to have such bond registered, so that it shall cease to become payable to bearer, the said
21 company will, on his request, register such bond in his name in a book to be kept by the company for that purpose, and will, by an endorsement upon such bond, certify that the same has been so registered, and thereupon the same shall be payable only to the person in whose name it is so registered, or his assign, and shall be transferable only on the books of the company.

The company shall keep a book or books containing such transfers, and no bond so registered and certified shall be transferable, except by a transfer in such transfer book or books, signed by the party in whose name such bond shall stand at the time of the transfer or his attorney duly authorized by a written power to be delivered to and retained by the company, and every such transfer shall be noted on the bond by the secretary or treasurer of the company, and the holder of any bond so registered may again make it payable to bearer by transferring it on said books to bearer and having such transfer noted by the secretary or treasurer on such bond.

But it is agreed that the company shall not incur any responsibility to the holder of any registered bond by reason of the payment of interest to the bearer of the coupon for such interest, and such payment shall discharge said company from liability for the interest so paid.

And it is further mutually agreed by and between the parties hereto that in case the said company should at any time desire to have any real or personal property which may be covered by this mortgage and not essential to the operation of said railroad discharged from the lien and operation of said mortgage the party of the second part or his successors shall release such property from the lien of this mortgage on the substitution therefor of other property of at least equal value and subjecting the same to the lien of this mortgage, or on the surrender to said trustees for cancellation of bonds secured by this mortgage to the amount of not less than two-thirds of the value of the property so sought to be released, and such bonds shall thereupon be cancelled.

And in case the said parties fail to agree as to the fact 22 whether any property sought by the company to be released is or is not essential to the operation of said railroad or as to the value of such property, or of any property proposed to be substituted therefor, those questions, or either of them, as to which the parties may disagree shall be decided by a referee, to be appointed by one of the judges of the superior court of the State of Connecticut, on the application of the company, and on at least three days' notice of such application to the party of the second part or his successor.

And it is further mutually agreed as aforesaid that in case it should be desired by the company at any time to exchange or replace any portion of the property which may be covered by this mortgage and which is essential to the operation of said railroad the party of the second part or his successor shall release from the lien and operation of this mortgage the property so sought to be exchanged or replaced on the company acquiring and by a proper instrument subjecting to the lien of this mortgage other property at least equal in value and utility for the purposes of said railroad to take the place of the property so released, and in case the parties cannot agree as to the value or utility of the property sought to be released and of the property proposed to be substituted therefor those questions shall be decided by a referee, to be appointed in the manner last hereinbefore prescribed.

In witness whereof, the said corporation, party of the first part, has caused its corporate seal to be hereto affixed and attested by its secretary and these presents to be signed and executed in its behalf by David Lyman, its president, who is hereunto duly authorized and empowered by a vote of its board of directors passed at a meeting of said board held at the city of New Haven the first day of May, eighteen hundred and sixty-nine.

[This is the Corporate Seal of the New Haven, Middletown and Willimantic Railroad Company.]

THE NEW HAVEN, MIDDLETOWN AND
WILLIMANTIC RAILROAD COMPANY.

Attest: O. VINCENT COFFIN, *Secretary.*
By DAVID LYMAN, *President.*

23 Signed, sealed, and delivered in the presence of—
CHARLES R. INGERSOLL.
JOHN C. HOLLISTER.

STATE OF CONNECTICUT, }
County of New Haven, } *ss:*

NEW HAVEN.

On this thirty-first day of May, A. D. eighteen hundred and sixty-nine, personally appeared David Lyman, president of the New Haven, Middleton and Willimantic Railroad Company, the signers and sealers of the within and foregoing deed, and acknowledged the same to be his free act and deed and the free act and deed of said railroad company, before me—

C. R. INGERSOLL,
A Superior Court Commissioner for New Haven County.

I hereby certify that United States internal revenue stamps to the amount $\frac{45}{100}$ dollars were affixed to the foregoing instrument, and were duly cancelled.

D. WEBSTER EDGCOMB,
Clerk for Hiram Appleman, Secretary of State.

Received June 1, 1869, and recorded by—

D. WEBSTER EDGCOMB,
Clerk for Hiram Appleman, Secretary of State.

STATE OF CONNECTICUT, *ss:*
OFFICE OF SECRETARY OF STATE.

I hereby certify that the foregoing is a true copy of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said State, at Hartford, this 30th day of November, A. D. 1869.

HIRAM APPLEMAN,
Sec. of State.

24 EXHIBIT C.

The Boston and New York Air Line Railroad Company has let, and hereby demises and lets, for the term of ninety-nine years from and after the thirtieth day of September, 1882, unto the New York, New Haven and Hartford Railroad Company all and singular the railroad of the party of the first part from a point in the city and county of New Haven to a point in the village of Willimantic, in the county of Windham, in the State of Connecticut, and at present passing through the towns of New Haven, North Haven, and Wallingford, in the county of New Haven; Durham, Middlefield, Middletown, Portland, and Chatham, in the county of Middlesex; Marlborough, in the county of Hartford; Colchester and Lebanon, in the county of New London; Columbia and Hebron, in the county of Tolland, and Windham, in the county of Windham, as the said railroad is now and as it may hereafter be located and constructed, and all the lands that are, or may hereafter be, included in the location of said railroad within the terminal points aforesaid, with all and singular the railways, rails, turnouts, bridges, viaducts, fences, station-houses, freight-houses, depots, shops, buildings, structures of every kind, cars, engines, rolling-stock, equipments, machinery, tools, ways, water-tanks, walls, fixtures, and all papers, documents, maps, and surveys of every kind showing the condition of the lessor's

title to its land hereby demised, and all its rights and obligations, and other appendages, privilages, contracts, rights, and leases thereto appertaining; and all property, right, and interest of every description acquired and held by the lessor for the maintenance or operation of its railroad, together with all the tolls, income, issues, and profits to be derived from the operation thereof by the lessee, and all rights to demand, receive, and recover the same, and to have and do everything necessary for the use, improvement, and
operation of said railroad the lessor covenanting with the
25 lessee that it has good right to lease said premises in manner
as herein set forth, and that it will suffer and permit the lessee (it keeping all the covenants on its part as herein contained) to occupy, possess, and enjoy said premises during the term aforesaid without hindrance or molestation, yielding and paying as rent therefor in each year of said term one hundred and twenty thousand dollars, which sum shall be paid in equal semi-annual payments of sixty thousand dollars each, the same to be distributed by the lessee on the first days of April and October in each year during the continuance of this lease, beginning April 1st, 1883, to such persons and such persons only as shall be certified by the lessor to have the right to receive the same by virtue of their respective holdings in the preferred stock of the lessor, as such right may appear on the stock-books of the lessor on the twentieth day of the months of March and September next preceding said days respectively, on the basis of two dollars on each share, and if the whole of said rent is not required in accordance with this provision the balance shall, at the end of six years from the time it becomes payable be paid over to said lessor.

And said lessee, in addition to the rent aforesaid, hereby covenants and agrees to pay for the benefit of the lessor, to the several holders thereof, the interest warrants or coupons of the twenty-five thousand dollars of bonds of the Colchester Railway Company, the payment of which is guaranteed by the lessor, and also the interest warrants or coupons of the five hundred thousand dollars first mortgage bonds of the lessor, upon presentation of the same at maturity; and the interest warrants or coupons of any new bonds which may be issued in lieu or extinction of the aforesaid bonds shall in like manner be paid by the lessee during the term of this lease to an amount not exceeding twenty-six thousand seven hundred and fifty dollars a year.

And the lessee further covenants with the lessor to pay, during
each year of said term, all taxes, rates, charges, and assess-
26 ments, ordinary and extraordinary, which may be lawfully
imposed or assessed in any way upon the lessor, its capital stock, indebtedness, franchises, and revenues, the premises hereby let, or said rental or any part of the same, said payments to be made to the authority or treasurer entitled by law to receive the same, whether such law be that of the United States, the State of Connecticut, or any municipal corporation of or in said State, so that said lessor shall be saved harmless during the said term of this lease from any such tax, assessment, or charge, under laws or proceedings

made or authorized by the United States or the State of Connecticut; and if any taxes or assessments shall be levied against the individual holders of the stocks or bonds of the lessor, in lieu of upon the lessor itself, its railroad and premises, the same shall be paid by the lessee.

And the lessee covenants with the lessor to make the several rental and other payments hereinbefore stipulated, as the same become due and payable in each year of said lease: Provided, nevertheless, That if any of said payments shall not be made within thirty days from the time when the same becomes payable, or if default be made for thirty days in the performance of any other of the covenants of lessee in this indenture contained and shall be thereafter continued for ten days after written notice of such default has been given to it by the lessor, then this lease shall expire and terminate at the option of the lessor, which may re-enter upon the demised premises and the same have and possess as of its former estate, and without such re-entry may recover possession thereof by the statutory proceedings of summary process, it being understood that no demand for the rent, or any part thereof, and no re-entry for condition broken as at common law, shall be necessary to enable the lessor to recover such possession, but that all right to any such demand or reentry is hereby expressly waived by the lessee saving to the lessor any right to damages for breach of any of the provisions of this indenture.

27 And it is further provided that all the old rails which were formerly on the tracks of the lessor, but are or shall be before the beginning of said term renewed and replaced by new rails, shall remain the absolute property of the lessor, and not pass as part of the demised premises.

And it is further provided that, whereas the lessor has mortgaged said demised premises by its deed dated August 1st, 1880, to secure its five per cent. bonds to the amount of five hundred thousand dollars, and has further guaranteed the bonds of the Colchester Railroad Company, secured by mortgage of said Colchester railroad dated January 1st, 1878, to the amount of twenty-five thousand dollars, which bonds will mature during the term of this indenture, the lessor or the Colchester Railroad Company, or both, may execute and deliver from time to time new mortgages to secure new bonds to be issued or guaranteed in renewal of or substitution for said five hundred and twenty-five thousand dollars of bonds now outstanding, or any part thereof, or in renewal of or substitution for bonds issued in renewal of such renewal bonds, and that all such mortgages shall be a lien on the demised premises, so far as they may purport to cover the same, paramount to this lease as fully as if executed and delivered prior thereto, and the lessee covenants to pay the necessary cost of preparing and issuing such new bonds and mortgages, unless it elects to pay the old bonds as hereinafter provided; but the total amount of bonds issued or guaranteed by the lessor outstanding at any one time shall never exceed five hundred and twenty-five thousand dollars in par value or the rate of interest thereon exceed that now paid: Provided, however, That the lessee may, at its option, pay any such bonds at maturity, and if it shall elect so to do the lessor shall secure the lessee, by mortgage or other proper instrument for the repayment, within such period not exceeding ten years (as the lessor may elect) from the expiration of this lease, of such sums of money as may be required in the payment of such bonds, with semi-annual interest thereon at the rates now paid, said interest to commence upon the termination of this lease.

28 And the lessee covenants with the lessor that it will maintain said demised premises and property during said term in as good order, repair, and condition as when received at the beginning of said term, replacing and renewing whatever becomes defective or worn out from time to time, all new property, improvements, and renewals to become part of the demised premises, and as such to be delivered up to the lessor at the expiration of this lease, whether occurring before or at the end of said term: Provided, however, That an inventory and appraisal of all the personal property hereby demised shall be made within one hundred and twenty days from October 1st, 1882, by J. H. Franklin and E. M. Reed, or (if they do not agree) by them and a third person to be agreed on by the lessor and lessee, and the action of a majority of said three persons shall be final and conclusive on both parties; and that at the expiration of this lease as aforesaid the parties hereto shall cause a new inventory and appraisal of all the personal property then in use in connection with said leased railroads to be made by one person appointed by each, and if such two persons do not agree then by them and a third person to be agreed upon by the lessor and lessee, and the action of a majority of said three persons shall be final and conclusive on both parties, and that the lessor shall then have the option either to take all the personal property in said inventory described or only so much thereof as equals in value at the appraisal the appraised value of said personal property hereby demised; and that in the first case the difference, if any, in favor of the lessee between the values of the property in the two inventories shall be paid by the lessor to the lessee, and in the second case the lessor shall have the right to select which of the articles in the inventory it will take to the amount of the value of the articles in the original inventory.

And the lessee covenants with the lessor that it will save the lessor harmless from all suits, costs, damages, and expenses by reason of any act or omission of the lessee in the use of said demised premises or otherwise under this lease, and will, at its own expense, defend all suits
brought against the lessor for any such cause, and pay the
29 judgment, if any, therein recovered, when demanded on final
process, and that it will make all returns during said term
which could be—were there no lease—required by the laws of the State of Connecticut or the United States from or of the lessor, to any public officers or officer, or other legal authority or assembly, and that, should any such returns be required by law of the lessor, the lessee will furnish, on demand, so far as it has the means, all information necessary therefor.

And the lessee further covenants with the lessor that it will keep and perform all and singular the contracts relative to the operation and maintenance of the demised premises, which are now in force and binding on the lessor, including all stipulations in deeds of real estate to the lessor or its predecessor in title, as on record, and in said lease of the Colchester railroad, dated April 3d, 1878, and in the award of Chief Justice Park as to the Middletown railroad crossing, dated May 2d, 1881.

And the parties hereto mutually covenant each with the other that in all other respects the covenants herein contained shall inure to the benefit of or be obligatory upon the parties respectively and their respective successors and assigns.

And the lessor covenants with the lessee that it will maintain its corporate organization, and will, from time to time, if requested by the lessee, proceed to appropriate and condemn by appraisal such real estate as the convenient operation of the demised premises may render desirable, the lessee, however, advancing and paying all expenses thereby incurred, including legal expenses; and the lessor also agrees that the lessee may use its name in bringing or defending any suits so far as it is or may be necessary for the quiet enjoyment and protection of the demised premises, but at the sole expense of the lessee, saving the lessor harmless from all loss, costs, or damages thereby accruing.

And the lessee further covenants with the lessor that it will furnish and keep all such books, forms, and papers, and do and
30 perform all such acts and things at its own cost and expense
as may be required for the proper issue, record, and transfer of the stock of the lessor, and for the registration and transfer of any of the aforesaid bonds, and will provide a suitable person to act as the transfer agent of the lessor during the continuance of this lease: Provided, always, That all stock certificates and bonds shall be signed by the proper officers of the lessor.

It is understood that this lease, when approved by the parties hereto by a stockholders' vote, as required by the laws of Connecticut (subject to which approval by both said lease is executed), shall be in lieu and discharge, from and after September 30th, 1882, of the existing contract between said parties, dated March 21st, 1879, saving to each party all rights under said contract accruing before October 1st, 1882.

In witness whereof the said parties hereto, under the authority and direction of their respective boards of directors, have caused this instrument to be signed and sealed by their respective presidents the — day of August, A. D. 1882.

Joint and Several Answer of the Boston and New York Air Line Railroad Company and of Alfred R. Goodrich, Treasurer of said State.

Superior Court, Middlesex County. November Term, 1884.

HUBERT B. GATES
vs.
THE BOSTON AND NEW YORK AIR LINE RAILROAD COMPANY *et al.*

First defense.

(1.) Paragraphs first, second, third, fourth, and tenth are admitted.

31 (2.) So much of paragraph five as alleges a conveyance by said Raymond, trustee, to this defendant company on July 8th, 1875, and that said trustee and his successors in the office of State treasurer have never since claimed any right or interest in the premises conveyed is admitted, and the rest of it is denied.

(3.) Said Raymond, as trustee under said mortgage, and in behalf of all the bondholders thereunder, brought to the superior court for New Haven county, at its May term, 1875, a bill to foreclose said mortgage against the New Haven, Middletown and Willimantic Railroad Company, Charles Atwater, Henry B. Harrison, Julius Hotchkiss, O. Vincent Coffin, William R. Galpin, John N. Camp, and George H. Bishop; and, pending said bill, Charles Dana, of the city and State of New York, and others, as holders of such bonds secured by said mortgage, and constituting in all a majority in interest of such bondholders, and Allyn M. Colegrove and others, creditors of said company, by leave of said court, intervened in said cause for their respective interests and became parties upon the record thereto; and, pending said bill, a scheme for the foreclosure of said mortgage and the reorganization of the management of the mortgaged premises, and for the transfer of said premises, if foreclosed, to a corporation to be formed by the first-mortgage bondholders, with a preferred stock of not exceeding 30,000 shares and a common stock of not exceeding 10,000 shares was agreed on by all parties in interest and approved by said court in said cause, which scheme is the same as that contained and enacted in this said defendant's charter; and all parties to and intervenors in said cause were fully heard in said cause, and with the consent of all said parties a decree was duly passed therein recognizing and resting on said scheme as enacted in said charter and ordering a strict foreclosure of said mortgage unless the sums due on the several bonds thereby secured and on the coupons thereto appertaining should be paid on or before the fourth Friday of June, 1875, to which suit and
32 decree the plaintiff was a party by representation, and whereby his rights were fully concluded.

(4.) Said foreclosure became absolute on said day under said decree, whereby all said mortgage indebtedness became merged in and paid by said foreclosed security.

(5.) Afterwards this defendant company was duly organized under its said charter, and thereupon, and conformably to its provisions, said Raymond, trustee, conveyed said foreclosed premises to this said defendant, as the absolute owner thereof, in fee-simple.

(6.) Paragraph six is admitted, except so much thereof as alleges the purchase and ownership of said bonds and coupons by the plaintiff, as to which, as also as to paragraph twelfth, the defendants have no knowledge sufficient to form a belief.

(7.) So much of paragraphs seven and eight as alleges that this defendant company claims ownership of said mortgaged premises and that the lease, Exhibit C, has been negotiated and a meeting called to ratify it, is admitted, and the rest is denied.

(8.) Paragraphs nine, eleven, and thirteen are denied.

Second defense.

The right of action for the cause stated in the complaint, being dependent on the validity of the said defendant's charter and its title under said deed of July 8th, 1875, did not accrue within six years next before the commencement of this action, but accrued more than seven years before the same, and for the plaintiff's delay and laches no excuse is shown; whereby his suit is barred.

By SIMEON E. BALDWIN,
Their Attorney.

33 *Plaintiff's Reply to the Joint and Several Answer of the Defendants in the Above-entitled Cause as to First Defense.*

Superior Court, Middlesex County. February Term, 1885.

HUBERT B. GATES
vs.
THE BOSTON AND NEW YORK AIR LINE R. R. *et al.*

1. The plaintiff demurs to all of paragraph 3 from and after the sixteenth line, in which the conduct and acts of the persons named therein as interveners, a scheme for foreclosure of a mortgage and reorganization of the management of the mortgaged premises and transfer thereof, as not constituting any defense or any part of a defense of a legitimate character, and as utterly irrelevant and frivolous, and as referring to persons not parties to this suit, and to acts and things not alleged to have been performed by this plaintiff or binding upon him, there being no allegation that the plaintiff had notice of the same or that he was actually a party thereto, or that any person authorized in his behalf consented thereto; and for further reason, because if said foreclosure was based upon any scheme for reorganization of the management of said mortgaged premises and allowed or ordered by the court, as alleged, the same was extra-judicial and without authority of law, and the said trustee had no authority or right to be a party thereto, and said proceedings and decree were without any legal authority whatever; and the plainttff demurs to the allegation in the last clause of said paragraph for the further reason that it is indefinite and obscure, there being in it no allegation as to what kind of representation the plaintiff was made

a party by nor any statement as to the manner of the representation or the person by whom it was effected.

2. Paragraph 4 is denied, so far af the allegations of merger and payment of the plaintiff's bonds are concerned.

34 3. Paragraph 5 is denied, except so far as hereinafter admitted. The plaintiff says that the defendant company organized under a charter, but said charter is unconstitutional and void as to this plaintiff, and further says that said Raymond did convey the mortgaged premises to the defendant company, but said conveyance is inoperative and void as against this plaintiff, and if said conveyance is of any validity whatever is valid only as a conveyance of such estate as he acquired by virtue of said foreclosure, and is subject to all the rights which the plaintiff had and now has as a bondholder under said mortgage whose debt was not and is not now due.

As to the second defense:

The plaintiff demurs to the whole of the same, because there is no allegation in it that the right of action accrued at the time of granting said charter or taking the alleged title under said deed, and because no time whatever is alleged in said defense when said right of action accrued, and no facts are alleged therein by which the same can be inferred, and because the injury complained of in the plaintiff's complaint is such as is not barred, if any exist, and because no laches appear on the face of the complaint and none are stated in said second defense.

HUBERT B. GATES,
By his attorney, S. A. ROBINSON.

35 *Judgment.*

Superior Court, Middlesex County. February Term, 1885.

HUBERT B. GATES, of South Orange, in the State of New Jersey,

vs.

THE BOSTON AND NEW YORK AIR LINE RAILROAD COMPANY OF Middletown; the New York, New Haven, and Hartford Railroad Comp'y of New Haven, and Alfred R. Goodrich, of Vernon, Treasurer of the State of Connecticut.

This action by complaint claiming an injunction, a receiver, and other relief, came to the November term of this court, 1882, and then by continuance to the present term, said Alfred R. Goodrich, treasurer of said State, having been made a party defendant after the original institution of said suit, and at this term all said parties appeared and were at issue, as on file.

The court, having heard the parties, finds the issues in favor of the defendants, and, at the request of the plaintiff, specially sets forth the facts found, as follows:

Each and all the allegations in the complaint of fraudulent conduct and conspiracy to defraud by the defendants, or either of them, are unproved and untrue.

The Boston and New York Air Line Railroad Company, prior to

its lease of its franchise and property to the New York, New Haven and Hartford Railroad Company, was unable to operate its railroad satisfactorily and profitably to those interested in it, and no dividends were paid. Since the execution of the lease four per cent. dividends have been regularly paid on its preferred stock, and the plaintiff's bonds have consequently large appreciated in value.
36 By converting them into preferred stock he can now realize about ninety-one per cent. of their face value by a sale, or four per cent. dividends as an investment.

The plaintiff was the financial manager of a mercantile copartnership by the name of Gates & Brother, composed of himself and his brother, in 1870 and 1871, when the bonds in question were issued. The firm took them and others of the same kind at those times in the regular course of their business in payment for supplies furnished by them to a contractor on the New Haven, Middletown and Willimantic Railroad Company.

The business of said copartnership was carried on at Colchester, in this State, and both copartners resided there until 1878, when the copartnership was dissolved, and in a division of assets the plaintiff received the bonds in suit.

From 1871 to 1878 the plaintiff was in poor health and unable to attend much to business. He was on that account in Europe a part of the year 1872, and again for three or four months in 1874, between the months of June and November. His illness was not such as to prevent his reading the current news in the papers, but he was not at the time the charter of the Boston and New York Air Line Railroad Company was granted aware of the fact, or that there had been a foreclosure decreed against the New Haven, Middletown and Willimantic Railroad Company, or that under the new corporation the bonds of the former company were being converted into stock. He has never personally been a party to or participated in any of the proceedings anterior to and involved in this suit, nor authorized any one to represent him in them, or any of them, or been personally served with notice with respect to them, nor in any way in fact assented to them, and has not elected to have his bonds due, and still claims them as valid and subsisting securities under the first mortgage of the New Haven, Middletown and Willimantic Railroad Company.

The change of name from that of the old to that of the new corporation was made on the outside of the cars soon after the
37 incorporation of the new company, and time-tables under the new name were posted in the depots along the line of the road and at other usual places, of which the newspapers have fully spoken.

The plaintiff was often in the city of New York after the firm received the bonds and during the continuance of the copartnership, and was occasionally in the office of Hatch & Foote, who were the agents, and one of them the treasurer, of the Boston and New York Air Line Railroad Company, and on these occasions had conversation with Mr. Foote about the payment of the coupons attached to said bonds, but he did not notice the change of name on the cars or time-tables.

All other allegations in the complaint which are denied in the answer are unproved and untrue, except those in paragraph 9, "that the Boston and New York Air Line Railroad Company claimed the power and right to do and perform the acts they had theretofore done by virtue of the powers granted them in their charter," "and that said charter was obtained without the knowledge or consent of the plaintiff."

The act of incorporation of the New Haven, Middletown and Willimantic Railroad Company, its mortgage to secure its first issue of bonds, the foreclosure of said mortgage, and the legal proceedings in connection therewith; the act of incorporation of the Boston and New York York Air Line Railroad Company, the conveyance to it of the property of the New Haven, Middletown and Willimantic Railroad Company, and its lease of its franchise and property to the New York, New Haven and Hartford Railroad Company are severally made a part of this finding.

The said acts of incorporation, mortgage, foreclosure, conveyance, and lease were and are as against the plaintiff legal and operative acts, instruments, and proceedings.

As a conclusion of law from these facts the court finds the issues for the dafendants.

Whereupon it is adjudged that the defendants recover of the plaintiff their costs, taxed at —.

PHELPS, *Judge.*

38 EXHIBIT 1.

Charter.

An act incorporating the New Haven, Middletown and Willimantic Railroad Company.

Resolved by this assembly: SECTION 1. That David Lyman, Henry G. Hubbard, Horace Smith, Charles Parker, Tilton E. Doolittle, Bartlett Bent, Jr., Charles G. Buel, O. Vincent Coffin, Moses W. Terrill, with such other persons as shall associate with them for the purpose hereinafter set forth, are hereby constituted a body politic and corporate, by the name of the "New Haven, Middletown and Willimantic Railroad Company," and by that name shall have power to sue and be sued, plead and be impleaded, in any court in this State, to make and have a common seal, and the same to break, alter, or renew at pleasure; and said corporation is hereby vested with all powers, privileges, and immunities which are or may be necessary to carry into effect the purposes and objects of this act as herein set forth; and said company is hereby authorized and empowered to locate, construct, maintain, complete, and operate a single, double, or treble railway or railroad from some suitable point in the city of New Haven through the towns of New Haven, North Haven, Wallingford, Durham, Middlefield, Middletown, Portland, Chatham, Marlborough, Hebron, Columbia, Lebanon, Colchester, and Windham to some suitable point in the village of Willimantic, or through such of said towns, or other towns adjacent thereto, in such route as may be found expedient for the most direct and feasible way for a railroad from New Haven to Willimantic through Middletown, and to transport, take, and carry property and persons upon said railroad or way by force and power of steam, of animals, or of any mechanical or other power, or of any combination of them which said corporation may choose to apply.

SEC. 2. The capital stock of said corporation shall be three
39 millions of dollars, with the privilege of increasing the same to six millions of dollars, or to any amount not exceeding said last-named sum, at the pleasure of said corporation; and said capital stock shall be divided into shares of one hundred dollars each, and shall be deemed personal property, and be transferable in such manner and at such places as the by-laws of said company shall direct.

SEC. 3. The persons named as corporators in the first section hereof, or a majority of them, and such person or persons as they shall appoint for that purpose, shall open books to receive subscriptions to the capital stock of said company, at such time or times and place or places as they, or a majority of them, shall appoint; and shall give such notice of the times and places of opening said books as they shall deem reasonable, and shall receive said subscriptions under such regulations as they may adopt for that purpose; and said corporators, or a majority of them, may authorize necessary surveys, services, and estimates as to said road prior to the organization of said corporation, the cost of which may be reimbursed by said corporation when organized.

SEC. 4. The persons named in the first section hereof, or a majority of them, are hereby authorized to call the first meeting of the stockholders of said corporation, in such way and at such time and place as they may appoint, whenever five hundred thousand dollars or more of the capital stock of said corporation has been subscribed for, to choose directors, and perfect the organization of said corporation; and, in all meetings of the stockholders of said corporation, each share shall entitle the holder thereof to one vote, which vote may be given by said stockholder in person or by lawful proxy; and, whenever said corporation shall have been so organized, it may proceed to commence the construction of the railroad hereinbefore specified; and the annual meeting of the stockholders of said company for the choice of directors shall be holden at such time and place and upon such notice as said company in their by-laws may prescribe.

SEC. 5. The immediate government and direction of the
40 affairs of the company shall be vested in a board of not less than nine directors, who shall be chosen by the stockholders in the manner herein provided, and shall hold their offices until others are duly elected and qualified as directors in their places; and the said directors (a majority of whom shall be a quorum for the transaction of business) shall elect one of their number to be president of their board, who shall also be president of said company. They shall also choose a clerk, who shall be sworn to a

faithful discharge of his duty, and a treasurer, who shall give bonds with surety to said company, in such sum as the by-laws may require, for the faithful discharge of his trust. And in case it shall so happen that an election of directors shall not be made on any day appointed by the by-laws of said company, said company shall not for that cause be deemed to be dissolved, but such election may be holden on any day which shall be appointed by the directors of said company; and said directors shall have power to fill any vacancy which may occur, by death, resignation, or otherwise, in their own body, by a majority vote of the directors present at any regular or special meeting called for that purpose.

Sec. *7* [6]. The directors shall have full power to make and prescribe such by-laws, rules, and regulations as they shall deem needful and proper (not contrary to the laws of this State or of the United States) touching the disposition and management of the stock, property, estate and effects of said corporation, the transfer of its shares, the duties and conduct of its officers and servants, the elections and meetings of directors, and all matters whatsoever which may appertain to the concerns or interests of said corporation. Said corporation shall have full power to equip, maintain, use, and enjoy the said railroad, and may purchase, hold, and use, anywhere upon the line of said road or otherwise, engines, cars, and other necessary things for the use of said railroad, and for the transportation of persons, goods and merchandise; and shall have power to purchase, receive, and hold such real estate, in fee-simple or
otherwise, as may be necessary or convenient to accomplish
41 the purposes of this act. And said company may make any
lawful contract with any other railroad company with whose railway its track may connect or intersect, in relation to its business or property, and may take lease of the property and franchise of, or lease its property and franchise to, or make joint stock with, any such railway company; and any company having any such connection or intersecting railway may make with this company the contracts aforesaid.

Sec. *8* [7]. Said corporation shall have all the powers, privileges, and immunities, in the statute laws of this State relating to railroads, in the act concerning communities and corporations in the revision of 1866, and shall be subject to the liabilities and restrictions therein contained, except as otherwise herein provided.

Sec. *9* [8]. Whenever the land or estate of any person, or of any *feme covert*, infant person, *non compos mentis*, *cestui que trust*, or person out of this State, shall be required for the purposes of said railroad, the notice to be given to such persons of a proposed laying out of said railroad, or location thereof upon said land or estate, or of an application by said company for the appointment of appraisers, or of an appraisal of said land or estate, may be such reasonable notice as shall be prescribed and ordered by some judge of the superior court, as by section four hundred and seventy-five of the act concerning communities and corporations, on page one hundred and eighty-seven of the Revised Statutes of 1866, and such notice, duly given in the manner so prescribed by such judge, shall be deemed sufficient notice to such persons. The husband of any such *feme covert,* the guardian of any such infant, the trustee of any such *cestui que trust,* and the conservator of any such person *non compos mentis,* respectively, may, in behalf of that person, release all damages for any lands or estates taken as aforesaid as effectually as they might respectively do if the same were holden in their own right respectively.

Sec. *10* [9]. If said company shall not complete the con-
42 struction of the railway hereby granted on or before July 4th,
A. D. 1876, then the powers herein contained shall become null and void.

Sec. *11* [10]. Said railroad company may borrow money at a rate of interest not exceeding seven per cent. per annum, payable semi-annually, and may secure the repayment of the same by its bonds, with or without its corporate seal, signed by its president and countersigned by its treasurer, with or without coupons attached thereto, to an amount not exceeding at any time one-half of the amount actually expended for the construction and equipment of their road. And the bonds of said company may be from time to time renewed, and may be made convertible into the stock of the said company, and may be disposed of at such times, places, and rates, and on such conditions, as shall be fixed by the directors of said company, and said company may, by a vote of its stockholders at a meeting duly called for that purpose, secure said bonds by a mortgage of its railroad and all its property, rights, and franchises under its charter, or any part thereof, by deed duly executed by its president, under the corporate seal of said company, to the treasurer of the State, and his successors in office, in trust for the holders of said bonds, and recorded in the office of the secretary of this State, but before being issued said bonds shall be registered in the office of the comptroller of public accounts, and a certificate thereof shall appear on the face of each bond: Provided, That no such bonds shall be issued by said company of a denomination less than five hundred dollars, and the president and chief engineer of said company shall certify to the comptroller of this State, under oath, the amount expended toward the construction and equipment of said road before said bonds shall be registered and issued as aforesaid.

Sec. *12* [11]. And for the purpose of crossing the Connecticut river with said railroad said corporation is hereby authorized to construct, maintain, and use, as a part of its railroad, a bridge across said Connecticut river at the narrows below the city, and within the
town of Middletown, of a span at least six hundred and
43 twenty-five feet in length, and of a height above the surface
of the water in said river, at said place, at low water, of at least one hundred and forty feet.

Sec. *13* [12]. Nothing contained in this resolution shall authorize or allow the using, in the construction or equipment of the line of railway herein authorized, any portion of the capital or funds of the Boston, Hartford, and Erie Railroad Company, or of any money loaned to them or that may be hereafter loaned to them; and no merger of the road herein authorized shall be made with the road of said Boston, Hartford and Erie Railroad Company; and no lease of the road herein authorized, and no transfer of the rights and franchises herein granted shall be made whereby said Boston, Hartford and Erie Railroad Company shall become the lessee or owner of the road herein authorized, until such time as said Boston, Hartford and Erie Railroad Company shall have fully completed their road from Waterbury to Fishkill.

Sec *14* [13]. This resolution may be altered, amended, or repealed at the pleasure of the General Assembly.

Approved, July 24, 1867.

An act amending the charter of the New Haven, Middletown, and Willimantic Railroad Company.

Resolved by this Assembly: Section 1. That the charter of the New Haven, Middletown, and Willimantic Railroad Company is hereby amended so that, for the purpose of crossing the Connecticut river with said railroad, said corporation is hereby authorized to construct, maintain, and use as part of its railroad a bridge across the Connecticut river, at or near the city of Middletown, to connect with the railway or track on the opposite sides of said river, and be a part of its railway or track; said bridge shall be constructed and used in such a manner as to cause no substantial and material obstruction to the free navigation of said river, and shall be provided
44 with two draws, each of which shall be of such a width as to
permit the free passage of the largest vessels navigating said river, and each of which draws shall be not less than one hundred and thirty feet in width, in the clear. Said corporation shall at all times during the season of navigation cause said draws to be kept open, except when necessarily closed for the passage of engines and cars, and shall give at all times to boats and vessels having occasion to pass said draws the preference over engines and cars, and shall cause said draws to be promptly opened to such boats and vessels, on signal, whenever said signal shall have been given before any train or engine shall have appeared in sight and signaled its intention to pass; and for any refusal or unnecessary delay in opening said draws said corporation shall pay just damages to the party aggrieved thereby. From sundown to sunrise, during the season of navigation, suitable lights or signals shall be maintained and kept upon said bridge on each side of said draws, and above or over the pier between the same, to guide vessels approaching said draws; and said corporation shall furnish and maintain a suitable tug-boat at or near said bridge to assist the passage of vessels through said draws, upon the application of parties interested in the navigation of said river, whenever, in the opinion of the general railroad commissioners, the same shall be necessary for the purpose aforesaid, and they shall order the same, and shall furnish such other reasonable facilities for the passage of vessels, without hindrance or delay, through said draws as said railroad commissioners may from time to time require, upon application made to them by any person or parties interested; and said corporation shall be liable to pay to all persons or parties who may be injured by the neglect or violation

of any provision of this section, or any negligence of the agents or employees of said corporation under said provisions, all damages which such persons or parties may suffer thereby.

SEC. 2. Said bridge and draws shall be located and constructed in such a manner, at such a place, and upon such plan as shall
45 be approved by a competent board of engineers, to be appointed by the superior court for Middlesex county, upon application to be made to said court by said corporation, and the spans of said bridge between the piers, except the draws and the spans at the ends of said bridge, shall be at least two hundred feet in length. Before appointing said board said court shall, by its order of notice, require such especial notice to be given in one or more of the newspapers published in Hartford and in Middletown, and such general and public notice to all parties interested as said court may deem reasonable, to appear and be heard, if they see fit, in reference to said appointment, and after such notice shall have been given in accordance with said order said court shall make said appointment. Said board, before determining upon the manner, places, and plan for the construction and location of said bridge and draws, shall give to the parties interested in said matters such notice and opportunity to appear before them and be heard in reference thereto as shall be required by order of said court, and shall finally make return of their doings to said court. And said corporation may locate, establish, build, and maintain the piers and works of said bridge in the places and in the manner to be designated in the plan which shall be so approved by said board.

SEC. 3. This resolution may be altered, amended, or repealed at the pleasure of the General Assembly.

Approved June 17, 1868.

An act relating to the charter of the New Haven, Middletown and Willimantic Railroad Company.

Resolved by this Assembly, That the several towns named in the first section of the resolution passed May session, 1867, incorporating the New Haven, Middletown and Willimantic Railroad Company, be, and hereby are, authorized to loan their credit by the issue of bonds, for the purpose of aiding in the construction of the railroad of said corporation, to an amount not exceeding, in the case
46 of each town, five per cent. of the amount of its grand list last completed, said bonds to be secured by a second mortgage of all the property and franchise of said railroad company: Provided, That no one of said towns shall be authorized to issue such bonds in aid of said railroad company until a vote of said town shall be passed by two-thirds of the electors present at a town meeting duly called for that purpose, approving of the issue of bonds not exceeding the amount above named.

Approved July 24, 1868.

An act confirming the vote of the town of Middletown for the issue of bonds to the New Haven, Middletown and Willimantic Railroad Company.

Whereas the legal voters of the town of Middletown, at a special town meeting duly called for that purpose and held on the fourth day of May, 1869, and in said meeting duly assembled passed the following resolution by nearly a unanimous vote, viz:

"Voted, That the town of Middletown loan its credit to the 'New Haven, Middletown and Willimantic Railroad Company' in the further sum of one hundred thousand dollars, on the conditions and subject to the same regulations as expressed in the vote of January twentieth, A. D. 1869, loaning the credit of the town to said company for two hundred and forty thousand dollars, subject, also, to the approval of the next General Assembly of the State of Connecticut:" Therefore—

Resolved by this Assembly, That the said action and vote of said meeting is hereby validated and confirmed to all intents and purposes, and that the same shall have the same force and effect as if the action of said meeting had been authorized by act of the Legislature of this State; and the bonds issued under and in pursuance of said vote shall be valid and binding upon said town of Middletown and the inhabitants thereof in the same manner and to the same extent as if authorized by the prior act of the Legislature.

Approved May 28, 1869.

47 An act in addition to an "Act for the assessment and collection of taxes."

Be it enacted by the senate and house of representatives, in General Assembly convened, That all bonds issued, or which may be issued, by any town or city in aid of the construction of the railroads of "The Connecticut Western Railroad Company," the "New Haven, Middletown, and Willimantic Railroad Company," the "Shepaug Valley Railroad Company," and "The Connecticut Valley Railroad Company," and either of them, in pursuance of legal votes of such town or city as authorized or ratified by the Legislature of this State, and all bonds issued, or which may be issued, by any town or city to provide or raise money to pay for stock subscribed by such town or city in any of the said railroad corporations in this State, in pursuance of legal votes of such town or city authorized or ratified as aforesaid, shall be exempt from taxation in the hands of the holders of such bonds: Provided, That whenever the avails of such bonds or stock shall have been expended in the construction of the railroads of said corporation respectively such railroad corporations shall pay a tax of one per cent. to the treasurer of this State upon the amount of such bonds issued by any town or city in aid of the construction of such railroad as aforesaid, whether such bonds are owned by persons or corporations in this State or elsewhere and upon the amount of stock subscribed by any town or city in any of the said railroad corporations as aforesaid.

Approved June 10, 1869.

An act in alteration of an act entitled "An act for the assessment and collection of taxes."

48 Be it enacted by the senate and house of representatives, in General Assembly convened: The treasurers of the several savings banks, societies for savings, and building associations established in this State shall, within the first ten days of July, annually make out under oath and deliver to the controller of public accounts statements of the total amounts of all deposits and stock in said institutions respectively, except the amount invested in bonds of this State, which by law are exempt from taxation, and also the amount invested in bonds issued in accordance with the act passed at the present session of the General Assembly, entitled "An act in addition to 'An act for the assessment and collection of taxes,'" and approved June 10, A. D. 1869, upon the amount of which bonds a tax of one per cent. is required to be paid to the treasurer of the State, for the use of the State, on the first day of the month in which such statements are herein required to be made, and each of such savings banks, societies for savings, and savings and building associations shall pay to the treasurer of this State, for the use of the State, a sum equal to three-fourths of one per cent. on the total amount of deposits and stock in such institution, except as aforesaid, on the first day of July in each year, one-half to be paid on or before the twentieth day of July and one-half on or before the twentieth day of January annually thereafter, which tax shall be in lieu of all other taxes upon said institutions and the deposits therein; but this section shall not be so construed as to exempt from taxation any real estate held by any savings bank, society for savings, or savings and building associations beyond what may be required and used by such institution for the transaction of its appropriate business.

Approved July 1, 1869.

An act amending the charter of the several railroads therein named.

49 Whereas the General Assembly at its May session, A. D. 1868, granted charters to the Connecticut Western, Shepaug Valley, and Connecticut Valley Railroad Companies, authorizing the towns along the the route of said railroads to subscribe for stock, and also amended the charter of the New Haven, Middletown and Willimantic Railroad Company so that certain towns were authorized to issue their bonds in aid of said railroads, said subscription of stock and issue of bonds being made dependent upon the approval of two-thirds of the electors present in town meeting duly called for that purpose; and whereas the object of the General Assembly in prescribing a decision by a two-thirds' vote was to secure the approval of those electors paying a major part of the taxes of said towns: now, therefore, in order to more effectually carry out the provisions of said charters—

Section 1. That said towns, excepting those having incorporated cities in their limits, be, and they hereby are, authorized to subscribe for stock and to issue bonds in aid of said railroads to further carry out the provisions in said charters and amendments thereto provided; that said towns shall, at a town meeting specially named for that purpose, vote to subscribe for said stock and issue said bonds under the conditions and restrictions named in the following section.

Sec. 2. Said meeting shall be called by the selectmen whenever a petition shall be presented to them signed by not less than twenty voters of the town and by such a number of the tax-payers of the town as together pay, or are assessed for, the major part of the taxes of the town, which petition shall state that the signers thereof are in favor of subscribing for said stock or issuing said bonds, and therefore ask that such meeting be called, and said petition, with the names of the signers thereto, shall be lodged in the town clerk's office at least ten days before the date of such meeting, and shall be open to the inspection of all. Signatures may be added to said petition or removed therefrom by any signer at any time up to the close of said town meeting, and the voting shall be conducted in the manner provided in said charters and amendments. If, after the closing at the ballot-boxes of said meeting, the selectmen, or a majority of them, on comparison of the names still remaining
50 appended to said petition with the grand list of said town
last made and completed, are satisfied that the signers of said petition pay, or are assessed for, the major part of the taxes of said town, and it shall also appear after the ballots are counted that a majority of the ballots so cast at said meeting are in favor of subscribing for said stock or issuing said bonds, then the said proposed vote shall be deemed and held to have been passed and adopted, and to be a lawful and valid vote of said town, and thereupon any subscription for said shares or in favor of issuing said bonds, made in conformity with said vote, shall be deemed and held to be a subscription made by said town, and shall be obligatory, according to the terms thereof, upon said town, and said petition and the names of the signers thereto shall be entered at length on the records of said town.

Approved June 25, 1869.

An act extending the time for the construction of the lines of the Boston, Hartford and Erie Railroad Company.

Resolved by this Assembly:

Section 1. That the time within which the Boston, Hartford and Erie Railroad Company may construct the following-described lines of railroad, to wit, the Providence, Hartford and Fishkill railroad, the Thompson and Willimantic railroad, and the Southern Midland railroad and its line chartered in Putnam, and extending from Putnam to the line of the State of Rhode Island, and located in the towns of Putnam and Thompson, in this State, is hereby extended to the fourth day of July, 1875.

Sec. 2. So much of the charter of the New York and Boston Railroad Company, and the several acts and resolutions of the General Assembly amendatory thereof, as may authorize the construction of a railroad between New Haven and Willimantic, is hereby repealed.

Approved July 1, 1869.

51 An act in addition to "An act for the assessment and collection of taxes."

Be it enacted by the senate and house of representatives in General Assembly convened:

SECTION 1. That the tax imposed in section forty-six, chapter I, title LXIV, of an act entitled "An act for the assessment and collection of taxes," shall take the place and be in lieu of all other taxes on railroad and horse railroad property, franchises, funded and floating debts within this State.

SEC. 2. All acts and parts of acts inconsistent herewith are hereby repealed.

Approved July 27, 1867.

Decree.

Superior Court, New Haven County. May Term, A. D. 1875. In Equity.

WILLIAM E. RAYMOND, Treasurer,

vs.

THE NEW HAVEN, MIDDLETOWN AND WILLIMANTIC RAILROAD COMPANY, Charles Atwater, Henry B. Harrison, Julius Hotchkiss, O. Vincent Coffin, William R. Galpin, John N. Camp, and George H. Bishop.

Upon the petition of the said William E. Raymond, treasurer of the State of Connecticut, in the above-entitled cause, showing that heretofore, to wit, on the 1st day of May, 1869, the New Haven, Middletown and Willimantic Railroad Company was a corporation chartered by said State for the purpose of constructing and operating a railroad from the city of New Haven to the village of Willimantic, with power to locate and construct the same through the towns of New Haven, North Haven, Wallingford, Durham, Middlefield,
Middletown, Portland, Chatham, Marlborough, Hebron, Co-
52 lumbia, Lebanon, Colchester, and Windham, and any other
towns adjacent to those above enumerated in the line of the most
feasible route between said terminal points, passing through Middletown, and with power to borrow money at a rate of interest not exceeding seven per cent. per annum, payable semi-annually, secured by its bonds, with coupons attached thereto, to the amount hereinafter specified, and to dispose of such bonds at such times, places, and rates, and on such conditions as should be fixed by its directors, and to secure such bonds by a mortgage of its said railroad and all its property, rights, and franchises, or any part thereof, to the treasurer of the State of Connecticut and his successors in office, in trust for the holders of said bonds, said mortgage to be recorded in the office of the secretary of this State; and further showing that on the day and year last aforesaid said company owned the aforesaid fran-

chise and rights, and a certain railroad then unfinished, but in process of construction, over a route between said town of New Haven and the village of Willimantic, in said town of Windham, situated in the several towns and counties aforesaid, and desired to borrow money to complete, build, and equip said road, and for any proper purpose connected therewith, upon the issue of its bonds to be secured by a mortgage as aforesaid, and that before that time, to wit, on the 22d day of February, 1869, said company had duly authorized and directed the execution in its behalf of such a mortgage to secure such its bonds to be issued on the faith thereof to an amount not exceeding $3,000,000, face value, and the directors of said company had agreed upon the form and tenor of said bonds; and that thereupon, on said 1st day of May, 1869, said company, by David Lyman, its president and agent, in that behalf thereunto duly authorized by a vote of its directors previously passed, by a deed duly executed under its corporate seal, attested and acknowledged, and delivered, did grant, bargain, sell, alien, assign, transfer, convey, and set over unto the then treasurer of the State of Connecticut, and
unto his successors in said office of treasurer of the State of
53 Connecticut, all and singular the railroad of the said New
Haven, Middletown, and Willimantic Railroad Company from the city of New Haven to the village of Willimantic, in said State, as the same then was or might thereafter be located, constructed, or improved, and all the roadway and lands that then were or might be included in the location of said railroad or acquired by said company for the purposes of said railroad within the several points aforesaid, with all and singular the railways, rails, bridges, fences, station-houses, depots, shops, buildings, structures, tools, cars, engines, equipments, machinery, fuel, materials, privileges, appendages, appurtenances, and property, real and personal, which at the date of said mortgage deed belonged or might at any time thereafter belong to said company, and be used as a part of said railroad, or be appurtenant thereto, or necessary for the construction, operation, or security thereof; and also all the property, rights, and franchises of said company under its charter and every part thereof, together with the rolls, income, issues, and profits thereof, and all rights to receive the same and everything necessary for the completion and operation of said road; to have and to hold the said granted and conveyed property and premises as aforesaid, as the same are herein above described, in trust for the person or persons, bodies politic or corporate, who should from time to time thereafter become holders of said bonds so then about to be issued by said company, and any of them, subject to the terms and stipulations of said bonds and charter and to the possession and control of said mortgaged property by the directors of said company so long as it should be in no default as respects any of the terms and stipulations of said bonds and mortgage; and showing further that in said deed it was further declared and provided that, in case said company should make default in the payment of the interest upon any of said bonds after due demand and presentation of the proper coupon for such interest, and said interest should remain unpaid for 60 days after such

default, then the person then holding the office of treasurer
54 of the State of Connecticut might and should, after the lapse
of said 60 days, upon the written request of the holder or holders of one-third in amount of the bonds secured by said mortgage and then outstanding. take actual possession of said railroad and of all and singular the property and effects, rights, and franchises so conveyed and mortgaged as aforesaid, or subject to said mortgage, and should through agents to be by him appointed receive the income and profits of said railroad for the purposes of the trust in said mortgage deed declared; and that in said deed it was further agreed, declared, and provided that if the interest on any of said bonds should remain due and unpaid for the term of six months after presentation of the proper coupon, and default in the payment thereof as aforesaid, then the principal of each of said bonds on which such default should be so made should, at the option of the holders of such bonds respectively, become due and payable immediately; and showing further that said mortgage deed was conditioned that upon the full payment of the principal and interest due and to become due from time to time upon said bonds, and each of them, according to their tenor, the estate and premises by said deed conveyed and granted should cease and be null and void; and showing further that after the execution and delivery of said deed the same was duly recorded in the office of the secretary of this State, and that afterwards said company caused to be issued and signed, from time to time between said day and year and the first day of May, 1873, a large number of its bonds, signed by its president and countersigned by its secretary, under its corporate seal, with coupons attached thereto bearing itnerest at the rate of seven per cent. per annum, payable semi-annually on the 1st days of May and November in each year on presentation and surrender of the proper annexed coupon, and the principal thereof being payable 20 years after the 1st day of May, 1869, and that none of said bonds were of a denomination less than $500, and that each of said bonds was, before its issue, duly registered in the office of the comptroller of public accounts,
a certificate whereof appeared upon the face of each such bond;
55 and that said bonds were disposed of at times, places, and
rates, and on the terms duly and legally fixed by the directors of said company, and were issued and disposed of, as aforesaid, to the amount in the aggregate of $3,000,000, face amount and value, and were each and all disposed of and received from said company on the faith and security of said mortgage deed; and showing further that afterwards, to wit, on the 1st day of May, 1873, said company made default in the payment of the interest, on said day falling due, on the whole issue of said bonds as aforesaid, and that although the proper coupons to said bonds attached were duly presented to said company for payment on said day and year, and payment thereof duly demanded by the holders of said bonds respectively from said company, with the offer to surrender their said respective coupons upon receipt of the interest due thereon, yet that said company did on said day and year fail and refuse to pay each and every of said coupons on each of said bonds, and that each of said coupons has

ever since remained wholly due and unpaid for more than six months, to wit, for about 2 years, and down to the date of this petition; and, showing further, that heretofore, to wit, on the 1st day of April, 1875, the then holders of more than one-third in amount of all the bonds above described and secured by said mortgage which were then outstanding, to wit, the holders of such bonds to the amount in all of $1,204,500, face amount and value, informed said petitioner in writing of said default of said company in respect to said interest on said bonds, and that the same had continued over 6 months continuously, and requested him in writing to take immediate actual possession, pursuant to the terms of and under said mortgage deed, of said railroad, and of all and singular the property and effects, rights, and franchises by said mortgage deed conveyed and mortgaged or subject to said mortgage; and that said petitioner was at the time when said request was made to him, and ever since has been and now is, the treasurer of the State of Connecticut, and that said request was made to him as such;
56 and, showing further, that after the date and delivery and record of said mortgage deed, to wit, on the 5th day of June, 1869, said company, by its deed of said date by it executed, attested and acknowledged and recorded in the office of the secretary of this State, conveyed unto Charles Atwater and Henry B. Harrison, both of the town and county of New Haven and State of Connecticut, and Julius Hotchkiss, of the town of Middletown, in Middlesex county, in said State, and to their successors and assigns, all the aforesaid property and franchises so conveyed and mortgaged as aforesaid to the treasurer of the State of Connecticut, and his successors in office, by said first mortgage; to have and to hold the same, subject to said first mortgage, on certain trusts in said second-mortgage deed specified; and showing further that afterwards, on the 1st day of July, 1871, said company, by its deed of said date by it executed, attested and acknowledged and recorded in the office of the secretary of this State, conveyed unto O. Vincent Coffin and William R. Galpin, both of the town of Middletown, county of Middlesex, and State of Connecticut, all the said property and franchises so conveyed and mortgaged, as aforesaid, to the treasurer of the State of Connecticut, and his successors in office, by said first mortgage; to have and to hold the same to them, the said O. Vincent Coffin and William R. Galpin, as trustees, and their successors in office, on certain trusts in said third mortgaged described, subject, nevertheless, to the prior rights and title theretofore conveyed by said first mortgage and said second mortgage; and showing further that afterwards, to wit, on the 1st day of February, 1874, said O. Vincent Coffin and William R. Galpin resigned, or claimed to resign, their aforesaid trusts, and that thereupon John N. Camp and George H. Bishop, both of said town of Middletown, were, or claimed to be, appointed their successors in the trust created by said third-mortgage deed; and that afterwards, to wit, on the day and year last aforesaid, said company placed said John N. Camp and George H. Bishop in possession of the property and rights conveyed by said third-mortgage deed to hold as trustees thereunder; and that said John N. Camp

57 and George H. Bishop are now in possession of all and singular the property and rights conveyed by said first-mortgage deed, and of the railroad of said company; and that said railroad is now equipped and in operation, and trains running thereon between said town of New Haven and said village of Willimantic; and that since the date and delivery of said first-mortgage deed said company has, chiefly with the means derived from the funds realized from the issue of said first-mortgage bonds, acquired lands, rails, bridges, fences, buildings, engines, cars, rolling-stock, tools, machinery, fuel, materials, privileges, franchises, and other property and rights to a great amount in value, for the purposes of its said railroad, and appurtenant thereto, or used therewith, or necessary for the construction, operation, or security thereof—all of which now belong of right to said petitioner as trustee under said first-mortgage deed as aforesaid; and showing further that pursuant to the request of the said bondholders, made to him on the 1st day of April, 1875, as aforesaid, he did at said Middletown, on the 16th day of April, 1875, demand from said John N. Camp and George H. Bishop the immediate possession of all and singular the railroad, railroad property, and all effects and franchises then in their possession, as aforesaid, under title derived from said company or said third-mortgage deed, yet that they, the said John N. Camp and George H. Bishop, then and there refused to deliver up possession of the same or of any part thereof to the petitioner; and that on the day and year aforesaid your petitioner made a like demand upon said company for the immediate delivery to him of the possession of all and singular the railroad, railroad property, and all effects, rights, and franchises conveyed by said first-mortgage deed, yet that said company then and there refused to deliver up possession of the same or of any part thereof to the petitioner; and showing further that heretofore, to wit, on the 19th day of April, 1875, Leonard Sheldon & Co., C E. Smith, J. G. McCullough, George B. Bouton, Gideon Reynolds, Hatch & Foote, William Berrian, D. C. Gates, G. 58 D. Woodman, E. Corning, F. N. Holley, Ranson Holley, G. W. Berrian, Jr., S. W. Berrian, John S. Tilney & Co., Samuel S. Sands & Co., for themselves and others, W. S. Pendleton, W. N. Hartshorne & Bro., William Alex. Smith, E. Ellery Anderson, and Charles Dana, for himself and others, being then respectively holders of said bonds of said company, issued under and secured by said first-mortgage deed, to the amount in all of $1,706,000, face amount and value, on each of which bonds interest had been due and unpaid ever since the 1st day of May, 1873, and for a term of more than six months after presentation of the proper coupons for the interest due on said day and year upon said bonds, and default in the payment thereof, exercised and declared their option respectively to have the principal of each of said bonds so held by them respectively become due and payable immediately; and that afterwards, to wit, on the 24th day of April, 1875, at said town of Middletown, said several bond-holders gave written notice to said company of their said election to have the principal of their said respective bonds become due and payable immediately; whereupon

the principal thereof has become and now is due and payable; and showing further that he has no adequate remedy at law, and must forever lose his just rights in the premises unless relieved by the interposition of a court of equity; and praying this court to order and decree that unless the said respondent, The New Haven, Middletown and Willimantic Railroad Company, shall, within such time as may be limited therefor by this court, pay to the holders of the several bonds, issued under and secured by said first-mortgage deed, the several sums due to them respectively on their said bonds and coupons, as hereinbefore stated, with lawful interest, then the said company, its successors and assigns, shall be forever foreclosed from all right and equity of redemption in and to all and singular the above-described mortgaged railroad property, rights, effects, franchises, and premises conveyed by and embraced in said first-mortgage deed; and that if said
company fail to make such payment, as aforesaid, then
59 unless the said other respondents, Chas. Atwater, Henry B.
Harrison, Julius Hotchkiss, O. Vincent Coffin, William R.
Galpin, John N. Camp, or George H. Bishop, or one or some of them shall, within such time as this court may limit therefor, pay to said holders of said bonds said several sums due to them respectively thereon, with interest as aforesaid, then they, and each of them, may be forever foreclosed of all right and equity of redemption in and to the above-described mortgaged railroad, property, rights, effects, franchises, and premises conveyed by and embraced in said first-mortgage deed; and that this court will grant such other and further relief as to equity may pertain; and on the supplemental bill, also filed in this cause, and hereinafter more particularly mentioned, it is found by this court that due and legal service of said petition was made upon each and every of the said respondents therein named, and that said petition was duly returned to and entered at this term of this court, as by said petition and the citation thereto annexed, and the officer's return thereon on file more particularly appears; and it is further found that at this term of this court the said New Haven, Middletown and Willimantic Railroad Company appeared by Robert G. Pike, Esq., its attorney, to defend against said petition, and that said O. Vincent Coffin and William R. Galpin likewise appeared, by their attorneys, Tilton E. Doolittle and Orville H. Platt, Esqrs., and that said John N. Camp and George H. Bishop likewise appeared by Samuel L. Warner, Esq., their attorney, and that said other respondents, being three times publicly called, made default of appearance; and that said petitioner appeared by Edward W. Seymour and Simon E. Baldwin, Esqrs., to prosecute his said petition, and also at this term filed his supplemental bill in this cause, showing that since the institution of this suit, in pursuance of a certain decree passed by this court at this present term, on petition of Charles Dana, one of said first-mortgage bondholders, possession of the aforesaid railroad has been delivered up to him by
said John N. Camp and George H. Bishop; and that due notice
60 of the preferment and filing of said supplemental bill has
been given to all the said respondents to said original bill.

And thereupon this court having made due inquiry into the several allegations in said petition, and in the answer of John N. Camp and George H. Bishop, on file in said cause, and into said supplemental bill, and having heard all said parties with their witnesses and counsel, doth find that all and singular the allegations in said petition contained are true, and that all and singular the allegations in said answer not inconsistent with said bill or with the other findings in this decree are also true; and that all and singular the allegations in said supplemental bill are true, and that the sum of $1,181.41 is now due and payable from the said New Haven, Middletown and Willimantic Railroad Company to the holders of each of the said first-mortgage bonds, for the amount and of the denomination of $1,000, issued by said company, and secured by its said first mortgage, who, on the 24th day of April, 1875, notified said company of their election to have the principal of such bonds become immediately due and payable, there being included in said above-described bonds, the principal whereof has so become due and payable, the bonds numbered respectively 918 to 939 inclusive, 1063 to 1067 inclusive, 618 to 627 inclusive, 2237 to 62 inclusive, 2264, 2267, 2276, 2279, 2284, 2286, 2288 to 2302 inclusive, 2304 to 2314 inclusive, 2316, 2318 to 2323 inclusive, 2325, 2326, 2328, 2329, 2330, 2332, 2333, 2337, 2339, 2340, 1015, 21, 14, 13, 346. 1380, 1, 2, 3, 4. 1325-24, 1478-9, 143, 751, 148, 1798-9, 1800-2, 1443-40, 1437-8, 1445, 47, 49, 51, 53, 55-56, 58, 59, 61, 62, 64, 66, 1436, 51761, 1251, 1248, 9, 50, 52, 2160, 1780, 1, 2, 1400-4, 1428, 29, 34, 33, 32, 31, 30, 1776, 7, 1807, 1778, 9, 1789, 7, 8, 6, 3, 5, 4, 1792-7, 1791, 1641, 1790, 1642, 142, 100, 147, 124, 1399, 1362-5, 750, 45, 49, 44, 125, 91, 2, 3, 4, 5, 40, 99, 126, 7, 1300, 746, 7, 717, 16, 18-20, 26-39, 261, 808, 9, 858, 9, 60. 337-42, 47, 48, 49, 50. 425-27, 614-15. 608-12. 365-69, 89-95. 96-98, 27-35. 221, 108, 109, 111, 242-4, 248-52, 253, 4, 1001-11.

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1285	1286	1287	1288	1289	1290	1291	
1292	1293	1294	1295	1296	1297	1298	
1299	1300	1301	1302	1303	1304	1305	
1306	1307	1308	1309	1310	1326	1327	
1328	1329	1330	1331	1332	1333	1334	
1335	1336	1345	1346	1347	1348	1349	
1350	1351	1352	1353	1354	1387	1388	
1389	1390	1467	1468	1469	1472	1473	
1474	1480	1481	1482	1483	1484	1485	
1470	1471	1576	1577	1578	1579	1580	
1581	1582	1583	1584	1585	1586	1587	
1588	1589	1590	1591	1592	1593	1594	
1595	1596	1597	1598	1599	1600	1601	
1602	1528	1529	2157	591	592	213	214
1803	1804	2018	223	1181	2189	1053	1040

1041 101 102 975 976 977 1042 1043
1044 1045 245 971 972 974 2158 2017
1311 1312 1313 1314 1315 1316 1317 1318
1319 1320 1321 1322 1323 978 979 980
981 982 983 984.
208 553-84 1760 493-7. 1016-19 1369-76 1222-27 1342-44
1603 1604 1132 215 212. 1766-75 2275-77, 78, 85, 87, 1259, 61.
122 146 150 753-5 766 914-15 1501-2 1507 1510-14 2181-8 1516
2190 2192-3 2224-31 2315 2317 2324 2327 2331 2334-6 2338,

and that the sum of $590.70 is now due and payable from said company to the holders of each of said first-mortgage bonds for the amount and of the denomination of $500, who, on said day and year, notified said company of their election to have the principal of such bonds become immediately due and payable, there being included in said last above-described bonds, the principal whereof has so become due and payable, the bonds numbered respectively:

62

2841. 2912, 18, 13, 15, 14, 17. 3526-46, 3524, 25, 28, 29, 30, 1,
2, 2761, 59, 58. 2512
2598 2739 2874 2875 2876 2877 2878
2982 2983 2984 2985 2986 5894 2997
2998 2999 3000 3548 3073 3074 3075
3076 3500 3479 3480 3481 3482 3483
3484 3485 3486 3487 3488 3489 3490
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3498 3499 3401 3402 3403 3404 3405
3406 3407 3408 3409 3410 3411 3412
3413 3414 3415 3416 3417 3418 3419
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3450 3451 3452 3453 3454 3455 3456
3457 3458 3459 3460 3461 3462 3463
3464 3465 3466 3467 3468 3469 3471
3472 3473 3474 3475 3476 3477 3478
3391 3392 3393 3394 3395 3396 3397
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3207 3208 3209 3210 3211 3253 3168
3174 3121 3122 3123 3124 3125 3126
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3142 3143 3144 3141 3145 3146 3147
3148 3149 3150 3151 3152 3154 3155
3156 3157 1358 3159 3160 3161 3162
3163 3164 3165 3166 3167 3169 3170
3171 3172 3173 3021 3022 3023 3011
3012 3013 3014 3015 3016 3017 3077 3078
3079 3080 3081 3082 3083 3084 3085 3086
3087 3088 3089 3090 3687 3688 3041 3042
3043 3044 3045 3046 3047 3048 3049 3050
3051 3052 3053 3054 3055 3056 3057 3058

3059 3060 3061 3062 3063 3064 3065 3066
3067 3068 3069 3070 3216 3217 3218 3219
3220 3221 3222 3223 3224 3225 3226 3227
3228 3229 3230 3231 3232 3233 3234 3235
3236 3237 3238 3239.
2750 2625 2701 2785 2971-79,

63 and that there is now due and payable by said company to the holders of each of the other of said first-mortgage bonds issued by said company, which is for the amount and of the denomination of $1,000, the sum $181.41 for interest accrued thereon, and to the holder of each of the other of said first-mortgage bonds issued by said company, which is for the amount and of the denomination of $500, the sum of $90.70 for interest accrued thereon; and that there is all due to the holders of all coupons now overdue and unpaid, and maturing either prior to or subsequent to November 2, 1872, and originally belonging and attached to any of said first-mortgage bonds, whether now detached therefrom or attached thereto, the several amounts due on the face of said coupons respectively. And it is hereby further found that a scheme for the reorganization of the management and ownership of said railroad has been agreed upon by all the parties in interest, and that for the accomplishment thereof the limitation of a very brief time for a foreclosure is necessary, and that all parties appearing as aforesaid in this cause have assented to the limitation of the period hereinafter specified for a foreclosure, and that all equities between them and those whom they represent have been fully adjusted and settled.

And in consideration of the premises, and after hearing all the parties aforesaid with their proofs, witnesses, exhibits, and counsel, it is hereby ordered, adjudged, and decreed that unless the said New Haven, Middletown & Willimantic Railroad Company shall, on or before the fourth Friday of June, 1875, pay to the several holders of each of those of the said first-mortgage bonds which are designated by and numbered with the numbers hereinbefore specified the said several sums hereinbefore found to be due and payable thereon, namely, $1,181.41 on each of said bonds for the amount and of the denomination of $1,000, and $590.70 on each of said bonds for the amount and of the denomination of $500, together with interest on the said amounts respectively at the rate of 7 per cent. from
64 the date of this decree, namely, the 4th day of June, 1875, to the date of said payment, and also pay to the holder of every other of said first-mortgage bonds not designated by any of said numbers, or of any coupons now detached from but originally belonging to any such bond, the amount due and payable upon said coupons, or of all coupons attached and appertaining to any such bond, as expressed upon the face of such coupons, upon tender or surrender of such coupons to such company, then the said New Haven, Middletown and Willimantic Railroad Company and its successors shall be forever barred and foreclosed of all right and equity of redemption in or to all and every part of the said mort-

gaged premises mortgaged by and embraced in the terms of said first-mortgage deed: Provided, however, That if said company shall, on or before said fourth Friday of June, 1875, pay to every holder of any of its said first-mortgage bonds with coupons attached, or of any coupons detached from but originally belonging to any such bond, who shall before said day present the said coupons to said company for payment, the several sums found to be due thereon, as hereinbefore provided, and shall on or before said day deposit in the Middletown National Bank the full amount due as aforesaid, on the day of such deposit, to each of the holders of such bonds or coupons which have not been theretofore, and after the date of this decree, presented to said company for payment of the amount thereon due, with an irrevocable power of attorney authorizing and directing said bank to pay on demand to the holder of each of said first-mortgage bonds or coupons who may present the same, or, as the case may be, the coupons appurtenant to any such bond, for payment the full amount due and payable thereon, as hereinbefore provided, said payment and deposit shall be deemed a full compliance with the terms of this decree and shall be effectual to retain to said company unimpaired hereby all its rights and equity of redemption in and to said mortgaged premises.

And it is further ordered, adjudged, and decreed that if the said New Haven, Middletown & Willimantic Railroad Company
65 shall fail to make such payments, or payments and deposits
to the extent and amount and within the time herein limited as aforesaid, then, unless the said other respondents, Charles Atwater, Henry B. Harrison, Julius Hotchkiss, O. Vincent Coffin, William R. Galpin, John N. Camp, or George H. Bishop, or one or some of them, shall, on or before the fourth Saturday of June, 1875, pay to the several holders of each of those of the said first-mortgage bonds which are designated by and numbered with the numbers hereinbefore specified, the said several sums hereinbefore found to be due and payable thereon, namely, $1,181.41 on each of said bonds for the amount and of the denomination of $1,000, and $590.70 on each of said bonds for the amount and of the denomination of $500, together with interest on the said amounts from said date of this decree to the date of said payment, and also pay to the holder of every other of said first-mortgage bonds not designated by any of said numbers the amount due and payable upon the coupons thereto appertaining as expressed upon the face of such coupon, and also pay all detached coupons originally attached to any of said first-mortgage bonds other than those designated by any of said numbers, but afterwards detached and held by owners other than the owners of the bonds to which they were originally appertained (those coupons only to be paid upon said first-mortgage bonds not designated by any of said numbers which are, according to the face of such coupons, due and payable prior to the expiration of the time hereinbefore limited for foreclosure, and all bonds and coupons so paid or redeemed by said last-named respondents, or any of them, to be delivered up to the party so paying or redeeming the same), then they, the said last-named respondents, Charles Atwater, Henry

B. Harrison, Julius Hotchkiss, O. Vincent Coffin, William R. Galpin, John N. Camp, or George H. Bishop, and each of them, and each of the *cestuis que trust* for whom they may or ought to act, and his and their heirs, successors, and assigns shall be forever barred and foreclosed of all right and equity of redemption in and to said
66 mortgaged premises, and every part thereof mortgaged by
and embraced in the terms of said first-mortgage deed: Provided, however, That if the said last-named respondents, or any or some of them, shall, on or before said fourth Saturday of June, 1875, pay to ever holder of any of the said first-mortgage bonds or coupons which are due and payable, who shall before said day present the same to said company for payment the several sums found to be due thereon as hereinbefore provided, and shall, on or before said day, deposit in the Middletown National Bank the full amount due as aforesaid, on the day of such deposit to each of the holders of such bonds which have not been theretofore and after the date of this decree presented to said company for payment of the amount thereon due, with an irrevocable power of attorney authorizing and directing said bank to pay on demand to the holder of each of said detached and overdue coupons originally attached to a first-mortgage bond, and to the holder of each of said first-mortgage bonds who may present the same, or, as the case may be, the coupons thereto appurtenant, for payment the full amount due thereon, as hereinbefore provided, said payment and deposit shall be deemed a full compliance with the terms of this decree as respects the party or parties who may make such payments, or deposit and payments, in manner aforesaid, and shall prevent the foreclosure of the right and equity of redemption of such party or parties under this decree; and whereas, upon the answer of John N. Camp and George H. Bishop duly filed in this cause, and a full hearing of all parties in interest thereon, it is found by this court that there was justly due to the said O. Vincent Coffin and William R. Galpin for their services from the 24th day of April, 1873, to the 14th day of February, 1874, as trustees in possession of said railroad, under the mortgage thereof to them dated the first day of July, 1871, the sum of $2,566.66, and that the said John N. Camp and George H. Bishop, on their coming into possession of said road, assumed the payment of the same, and that said sums are justly due at the date of this decree unto the
said John N. Camp and George H. Bishop, together with
67 interest thereon from said 14th day of February, 1874, making
in all, for principal and interest, the sum of $2,802.23, so due at the date of this decree, to wit, on the 4th day of June, 1875, and that there is also justly due to said John N. Camp and George H. Bishop, for their services as trustees in possession of said railroad, under said mortgage, from the 14th day of February, 1874, to the 4th day of June, 1875, and as superintendents thereof during said period, the sum of $6,645.76, and that there is also due to said John N. Camp and George H. Bishop, for advances made by them while such trustees in possession, the sum of $9,669.55, and that said sev-sums, amounting in all to the sum of $19,117.54, are equitably chargeable upon all and singular said mortgaged premises as part

and parcel of the sums secured by a first lien, as hereinafter is more particularly described and provided; and whereas it is further found by this court that said O. Vincent Coffin and William R. Galpin, while trustees in possession of said railroad, made certain contracts and contracted thereby certain obligations for the benefit of said railroad, and that said contract and obligations were necessarily and properly assumed by said John N. Camp and George H. Bishop, as their successors in said trust, and now rest upon said John N. Camp and George H. Bishop; and that said John N. Camp and George H. Bishop, while in possession of said railroad, have themselves made a certain contract and contracted thereby certain obligations for the benefit of said railroad, and that all and singular said contracts made by said O. Vincent Coffin and William R. Galpin, and by said John N. Camp and Geo. H. Bishop, were and are necessary for the proper care, management, and operation of said railroad, and are ought to be an equitable charge upon said premises embraced by and included in the terms of said first mortgage, in the manner and to the extent hereinafter specified, and that the propriety and validity of said charge is assented to by all said parties to this cause appearing in court, and that said contracts and obligations include the following, namely: A contract with Samuel L. Warner,
68 resulting in such an obligation for the sum of $3,016.67; and
a contract with Charles E. Perkins, resulting in such an obligation for the sum of $100; and a contract with Peleg Thomas, resulting in such an obligation for the sum of $300; and two contracts with the Rhode Island Locomotive Works, one resulting in such an obligation for the sum of $1,400 and the other resulting in such an obligation for the sum of $4,441.81; and a contract with the Watson Manufacturing Company of Springfield, in the Commonwealth of Massachusetts, resulting in such an obligation in favor of said company for the sum of $19,660; and a contract with Julius Hotchkiss, resulting in such an obligation in his favor for the sum of $5,089.61; and a contract with H. A. Hall, resulting in such an obligation in his favor for the sum of $4,215.44; and a contract with W. H. Noyes, resulting in such an obligation in his favor for the sum of $4,215 44; and a contract with Isaac Roberts, resulting in such an obligation in his favor for the sum of $1,335.49; and a contract with the respondent, John N. Camp, resulting in such an obligation in his favor individually for the sum of $5,535.43; and a contract with Allyn Colegrove and P. H. Turner, resulting in such an obligation in their favor for the sum of $6,927.36; and a contract with Tilton E. Doolittle, Esq., resulting in such an obligation for the sum of $100; and a certain contract with E. Ellery Anderson, acting for himself and others as a committee and in behalf of the interest of said first-mortgage bondholders for sums advanced and expenses incurred out of the private funds of himself and others, but for the benefit of the parties claiming under said first mortgage, resulting in such an obligation in favor of said E. Ellery Anderson for the sum of $3,880.62, interest being reckoned up to the date of this decree on all of such aforesaid obligations as are entitled to draw interest, and on said charges for services of trustees,

and for cash advances by said John N. Camp and George H. Bishop, trustees as aforesaid; and whereas it is hereby found that there are sundry current expenses and accounts heretofore
incurred by said John N. Camp and George H. Bishop while in
69 possession of said railroad in the necessary operation of the
same for running expenses, much of which is not yet payable, and all of which amount to the sum of $4,000, as nearly as the same can be ascertained, it is hereby further ordered and decreed that the payment of all said current bills and expenses shall be assumed and made by said petitioner, to be liquidated out of the next earnings of said railroad while in his hands, and that if he fail to pay and satisfy any of said accounts forming a part of said current expenses estimated at said sum of $4,000, and to save said John N. Camp and George H. Bishop and their executors, administrators, and assigns forever harmless from the same, by reason whereof they or any of them shall be compelled to pay the same, then that said sums so by them paid by reason of the default of said petitioner shall be and remain, and they are hereby declared and adjudged to be, part and parcel of said first lien hereinafter and hereby ascertained and declared to attach to said railroad, railroad property, rights, and franchises, prior and paramount to said first mortgage in favor of said John N. Camp and George H. Bishop, their executors, administrators, and assigns, as is next hereinafter provided.

And upon the several facts and findings hereinbefore set forth, and with the assent of all said parties to this suit appearing in the same, and after due notice to all parties in interest, now, therefore, on consideration thereof, it is hereby further ordered, adjudged, and decreed that the aforesaid charges of said former and present trustees in possession for services and advances and said obligations growing out of said contracts in favor of Samuel L. Warner, Charles E. Perkins, Peleg Thomas, The Rhode Island Locomotive Works, The Watson Manufacturing Company, Julius Hotchkiss, Henry A. Hall, W. H. Noyes, Isaac Roberts, John N. Camp, Colegrove and Turner, and E. Ellery Anderson, respectively, as aforesaid, which now rest upon said John N. Camp and George H. Bishop, trustees as aforesaid, and were necessarily incurred and assumed by them,
together with said current labor and expense account, esti-
70 mated at $4,000, amounting in all to the sum of $83,335.41,
including interest as aforesaid to the date of this decree, be and are, and they are hereby, declared and adjudged to be a first lien upon such railroad, railroad property, and franchises, prior in right to the lien under said first mortgage, and that the title of the said petitioner, William E. Raymond, treasurer of this State, and of his successors in office under said first mortgage, is and shall forever remain subject to said first lien on said mortgaged premises for the said several sums hereinbefore particularly specified, and that no part of the earnings of said railroad shall be divided among the holders of said first-mortgage bonds or any parties representing or claiming under them, until all and singular said obligations constituting said first lien are fully paid and satisfied; and that said first lien may be enforced against all subsequent incumbrancers, in-

cluding all parties claiming under said first mortgage, by a bill of foreclosure, if deemed necessary, by said John N. Camp and George H. Bishop and their representatives, heirs, and assigns.

And it is further ordered, adjudged, and decreed that upon the payment and satisfaction unto said John N. Camp and George H. Bishop, their executors, administrators, or assigns, of the full amount hereinbefore found to be due to them, and to be secured by said first lien herein ascertained and declared, together with interest on said several sums at the rate of 7 per cent. a year from the date of this decree, namely, the 4th day of June, 1875, unto the date of such payments, said payment being made by any party owning the equity of redemption in said mortgaged premises or any mortgage title to the same, or title by foreclosure of a mortgage, or by any corporation which may be lawfully organized by the holders of said first-mortgage bonds and coupons, to take and operate said railroad and mortgaged premises, or by any holder or holders of any bonds or coupons secured by said first mortgage, or of any stock in such corporation, then, upon receipt of such payment,
the said John N. Camp and George H. Bishop, their executors,
71 administrators, and assigns, shall forthwith release and
convey to the party or parties making such payment to them, as aforesaid, all their title and lien, as hereinbefore defined and declared, in and upon said mortgaged premises, and also assign and transfer unto said grantee or grantees all their said claims and demands secured by said lien; and that upon the delivery of such release and conveyance, duly executed like a deed of land, and upon the lodgment thereof for record in the office of the secretary of this State, thereupon said first lien herein ascertained and declared shall be absolutely and forever discharged, released, satisfied, and extinguished. And whereas it is further found on due inquiry that Julius Hotchkiss, of said Middletown, has an equitable claim against said railroad and mortgaged premises amounting to the sum of $9,000, and that Allyn M. Colegrove, of said Middletown, has a like claim for $15,875, and that Phineas W. Turner has a like claim for the amount of $5,250, and that the town of Portland has a like claim for the sum of $38,000, and that the town of Middletown has a like claim for the sum of $112,000, and that said sums have been agreed upon as the respective amounts due to said parties respectively by an agreement heretofore duly made and acknowledged before this court by and between said Julius Hotchkiss, Allyn M. Colegrove, and Phineas W. Turner, appearing in person before this court, and said town of Middletown and its selectmen, appearing by Arthur W. Bacon, Esq., and Robert G. Pike, Esq., their attorneys, and said town of Portland appearing by Samuel L. Warner, Esq., its attorney, and a majority of said first-mortgage bondholders, also represented in court; and said agreement was made upon the express condition that said several sums should be paid to said several claimants respectively in common stock of the Boston and New York Air Line Railroad Company, a corporation to be organized by said first-mortgage bondholders for the operation and ownership of said railroad, to wit, that Julius Hotchkiss is to receive 90 shares of said

common stock in full satisfaction of his claim, and said Allyn M.
Colegrove 158¾ shares of said common stock in full satisfac-
72 tion of his said claim, and said Phineas W. Turner 52½ shares
of said common stock in full satisfaction of his said claim, and
said town of Middletown 1,120 shares of said common stock in full satisfaction of its said claim, and the town of Portland 380 shares of said common stock in full satisfaction of its said claim; and whereas it is further found that said several claims do not arise out of claims for land damages for land taken for the use of said railroad, nor from any of the bonds or coupons secured by said first mortgage:

Now, therefore, in consideration thereof, and with the consent of all said parties and of all parties to this cause, it is hereby ordered, adjudged, and decreed that nothing in this decree shall be construed to foreclose any of said equitable claims in favor of Julius Hotchkiss, Allyn M. Colegrove, Phineas W. Turner, and the towns of Middletown and Portland, but that the same shall and may be satisfied by the surrender, assignment, and transfer of the same to said Boston & New York Railroad Company in exchange for its common stock in manner aforesaid; and that said several claims are in equity a valid charge upon said mortgaged premises to the extent and pursuant to the agreement hereinbefore specified and described.

And it is further decreed that no costs be taxed against any of the parties hereto.

The above and foregoing is a true copy of record.

Attest: EDWARD A. ANKETTELL,
Assistant Clerk of the Superior Court within and
for New Haven County, State of Connecticut.

EXHIBIT 3.

(House joint resolution No. 78.)

(17.)

Incorporating the Boston and New York Air Line Railroad Company.

Whereas the interest on the first-mortgage bonds of the New
Haven, Middletown and Willimantic Railroad Company has
73 not been paid since November 1st, 1872, and foreclosure pro-
ceedings in behalf of the holders of said bonds are pending
in the superior court for New Haven county, and public convenience and necessity require a considerable further expenditure for the thorough completion and equipment of the road, which expenditure said bondholders, on their incorporation as herein provided, are ready to make:

Resolved by this assembly: SECTION 1. That E. Ellery Anderson, Samuel L. Warner, Charles Dana, Julius Hotchkiss, S. S. Sands, A. M. Colegrove, J. N. Camp, D. B. Hatch, and T. L. Watson, with such other persons as shall be associated with them for that purpose, are hereby constituted a body politic and corporate, by the name of the Boston and New York Air Line Railroad Company, and by that name shall have power to sue and be sued, plead and be impleaded in any court, to make and have a common seal, and to purchase, acquire, hold, and convey any, estate, real or personal, which may be necessary for the ownership, improvement, completion, reparation, operation, equipment, enjoyment, and protection of a railroad running from a point in the city of New Haven to a point in the village of Willimantic, and said corporation shall be forever located in the city of Middleton, in this State.

SEC. 2. The capital stock of said corporation shall consist of not over forty thousand shares of the par value of one hundred dollars each, of which not exceeding thirty thousand shares shall be preferred stock, and shall be issued by the directors of said company only in exchange for the first-mortgage bonds of said company, at the rate of five shares for every such bond for the amount of five hundred dollars, and ten shares for every such bond for the amount of one thousand dollars, which, together with all the coupons belonging to such bond and not prior to the time when the title of the trustee under said first mortgage to the premises thereby mortgaged shall become absolute by foreclosure, past due and unpaid, shall be surrendered to said directors for that purpose.

74 SEC. 3. The residue of said capital stock, to wit, not exceeding ten thousand shares of common stock, shall be issued by said directors in exchange, first, for such overdue and unpaid coupons, detached from said first-mortgaged bonds, as shall have matured prior to the time when the title of the trustee under said first mortgage to the premises thereby mortgaged, shall become absolute by foreclosure, and shall, together with the interest accrued on such coupons subsequent to their maturity, equal in amount to their face value, the par value of the stock in exchange for which they may be surrendered, fractional shares of stock being issued, when necessary, for this purpose; and said common stock may be issued, second, in satisfaction of any legal or equitable claims against said road, or said bondholders or their representatives, or the New Haven, Middletown and Willimantic Railroad Company, existing prior to the time when the title of the trustee for said bondholders under said mortgage shall become absolute by foreclosure, as may be agreed upon between said directors and the holders of said claims; and any town may accept such stock in satisfaction of any such claim in its favor.

And all executors, administrators, guardians, and trustees are hereby authorized and empowered to transfer any and all bonds and coupons held by them in their official capacity, in exchange for stock as herein provided.

SEC. 4. Whenever the title of the trustee under the said first mortgage shall become absolute by foreclosure of the mortgaged premises, he shall, on demand of the said Boston and New York Air Line Railroad Company, and on satisfactory proof that a majority of the bonds secured by said mortgage have been surrendered to said company in exchange for its preferred stock, as above provided, and on payment by said company of his reasonable charges and expenses accruing from and in the execution of his said trusts, convey to said company, and its successors and assigns, in fee-simple, all his then right, title, and interest in and to said mortgaged premises; and such conveyance shall be effectual 75 to discharge him forever from said trust, and to vest said premises, including all the rights and privileges granted by its charter and the several amendments thereto, to the New Haven, Middleton and Willimantic Railroad Company, its successors and assigns, forever.

SEC. 5. At all meetings of said Boston and New York Air Line [Railroad] Company each share of stock, whether common or preferred, shall entitle the holder thereof to one vote, but no dividends shall be declared upon said common stock until dividends have been declared out of the net earnings of said railroad upon all of said thirty thousand shares of preferred stock equal to seven per cent. a year thereon from the date of the last coupons on said first-mortgage bonds, default on which was made prior to the time when the title of the trustee under said mortgage to the mortgaged premises became absolute by foreclosure, and after the declaration of said dividends upon said preferred stock the residue of the annual net earnings of said railroad shall be applied in dividends upon said common stock until the same shall be equal to seven per cent. a year thereon from the date of the last coupons on said first-mortgage bonds, default on which was made prior to the time when the title of the trustee under said mortgage to the mortgaged premises became absolute by foreclosure; and after the payment of said dividends on both the preferred and common stock the residue of the net earnings of said company shall be applied equally for the benefit of preferred and common stock without distinction.

SEC. 6. Said Boston and New York Air Line Railroad Company may issue its bonds for an amount not exceeding two millions of dollars, and all the provisions of section eighty-two of part nine of chapter two of title seventeen of the general statutes of Connecticut shall govern the issue and disposition thereof, except those provisions limiting the amount which may be outstanding at any one time, and requiring a certificate from the president and chief engineer; and excepting further that no such bonds shall be issued for 76 an amount exceeding five hundred thousand dollars, except by a vote of three-fourths of all the stockholders present or absent at a meeting duly warned for the purpose of voting upon such issue. Said bonds may be secured by mortgage in the manner provided in section eighty-three of part nine of said chapter and title, and such mortgage may be made to any persons whom said corporation may select; Provided, however, That said first five hundred thousand dollars of the issue of said bonds, or the avails thereof, shall be used and applied as follows—that is to say: so much thereof as may be necessary to pay off and discharge all just claims of the past and present trustees under the convertible mortgage (so called) made on said road, and also so much thereof as may be necessary to pay off and discharge all claims and contracts for rolling-stock purchased by said trustees, or any of them, for the use of said road, and the balance thereof shall be used and applied in fully completing the construction of said road, including the payment of all necessary outlays and expenses pertaining thereto, and also in purchasing sufficient rolling-stock and other equipments necessary to the prompt and thorough prosecution of the business of said road, and no portion of said first five hundred thousand dollars issue of bonds, or the avails thereof, shall be used or applied for any other purpose whatever until all of the claims aforesaid are fully paid and discharged, and until said road shall be completed and equipped as herein provided.

Sec. 7. Said Boston and New York Air Line Railroad Company shall, except as herein otherwise provided, have all the powers and be subject to all the provisions respecting railroad companies which are prescribed and contained in article two of part nine of chapter two of title seventeen of the general statutes, and upon said conveyance to it by the trustee under said first mortgage of his foreclosure title to the premises covered by said first mortgage shall be invested with all the rights, privileges, franchises, property, and immunities heretofore granted or appertaining to the New Haven, Middletown, and Willimantic Railroad Company.

77 Sec. 8. The first meeting of the corporation hereby constituted shall be held at the city of Middletown at such day, hour, and place as may be designated by a majority of the corporators herein named, but a notice of the calling of said meeting and of said day, hour, and place for holding the same shall be advertised for at least seven successive days in a daily newspaper published in the city of New York, and in a daily newspaper published in the city of New Haven, and at least twice in two successive issues of a weekly newspaper published in the city of Middletown, and a copy of said notice shall be delivered to each of the said corporators who may not unite in the call for said meeting.

At said first meeting each holder of a first-mortgage bond of said New Haven, Middletown and Willimantic Railroad Company, who is present either in person or by proxy, shall be entitled to one vote for each one hundred dollars of the principal of the bond or bonds held by him, and at said first meeting directors may be chosen and by-laws adopted conformably to the provisions of the general statutes of Connecticut respecting railroad companies.

Sec. 9. Said company shall not sell, lease, transfer, merge, or make any other disposition of said railroad without the approval of three-fourths of all the stock of said company.

Sec. 10. This act may be altered, amended, or repealed at any time at the pleasure of the General Assembly.

Approved June 8th, 1875.

Exhibit 4.

To the people to whom these presents shall come, Greeting:

Know ye that I, William E. Raymond, treasurer of the State of Connecticut, and as such trustee under a certain mortgage deed, dated May 1, 1869, executed by the New Haven, Middletown
78 and Willimantic Railroad Company, a corporation incorporated by said State, to the treasurer of said State, and his suc-

cessors in said office of treasurer of said State, to secure an intended issue of bonds of said company to the amount of three millions of dollars, which mortgage has since been foreclosed on a bill in equity brought by me in the superior court for New Haven county, at its May term, 1875, do hereby, for the consideration of two hundred dollars compensation for my services as such trustee under said mortgage, received to my full satisfaction of the Boston and New York Air Line Railroad Company, a corporation chartered by the State of Connecticut, by a resolution passed at the May session, 1875, of the General Assembly, "incorporating the first-mortgage bondholders of the New Haven, Middletown and Willimantic Railroad Company as the 'Boston and New York Air Line Railroad Company,'" and pursuant to the provisions of said resolution, directing me to make this conveyance on demand of said last-named company and on satisfactory proof that a majority of said first-mortgage bonds have been surrendered to it in exchange for its preferred stock, do remise, release, and forever quit-claim unto the said Boston and New York Air Line Railroad Company, an incorporation incorporated as aforesaid, and its successors and assigns, forever all the right, title, interest, claim, and demand whatsoever as I, the said releasor, have or ought to have under said mortgage deed, and under said deed of foreclosure under which said mortgage title became absolate, on the twenty-sixth day of June, 1875, in and to all and singular the railroad formerly owned by the New Haven, Middletown and Willimantic Railroad Company, running from a point in the city of New Haven to the village of Willimantic, in the State of Connecticut, as the same is, has been, and may be hereafter located, constructed, or improved, and all the roadway and lands that are or may be included in the location of said railroad, and that ever were acquired by the said last-named company for the purposes of said railroad within the several points aforesaid, with all and singular the railways, rails, bridges, fences, station-houses, 79 depots, shops, buildings, structures, tools, cars, engines, equipments, machinery, fuel, materials, privileges, appendages, appurtenances, and property, real and personal, which ever belonged to said last-named company, and were or are used as a part of said railroad, or are or were appurtenant thereto, or are necessary for the construction, operation, or securety thereof; and also in and to all the property, rights, and franchises ever belonging to said last-named company under its charter, and every part thereof, together with the tolls, incomes, issues, and profits thereof, and all rights to receive the same and everything necessary for the completion and operation of the said railroad, meaning hereby to convey to the Boston and New York Air Line Railroad Company and its successors and as-assigns, in fee-simple, all my right, title, and interest in and to the premises embraced in said mortgage, and to vest said premises in said releasee, its successors and assigns, in fee-simple, including all the rights and privileges heretofore granted by its charter and the several amendments thereto, to the New Haven, Middletown and Willimantic Railroad Company, and all improvements put upon and equipments added to said railroad by any and all trustees by mortgage who are or have been in possessian of said road :

To have and to hold the premises, with all their appurtenances, unto the said releasee, its successors and assigns, forever, to its and their sole use and behoof, so that neither I, the releasor, nor my successors in office, nor my heirs, nor any other person under me or them, shall hereafter have any claim, right, or title in or to the premises or any part thereof; but therefrom I and they are by these presents forever barred and secluded, being by virtue of this conveyance discharged forever from said trust, according to the provisions of said resolution incorporating said releasee.

In witness whereof I have hereunto set my hand and seal this eighth day of July, A. D. 1875.

WILLIAM E. RAYMOND. [L. s.]
Treasurer.

80 Signed, sealed, and delivered in presence of—
SIMEON E. BALDWIN.
JOHN B. MILLS.

New Haven County, *ss:*

New Haven, *July* 8, 1875.

Then and there personally appeared William E. Raymond, personally known to me to be the signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me, as witness my hand and notarial seal.

July 17, 1875.

[SEAL.]

JOHN B. MILLS,
Notary Public.

A true record.
Attest: E. W. N. STARR, *Registrar.*

Town Clerk and Registrar's Office,
Middletown, Ct., *March* 16, 1882.

A true copy of record.
Attest: ELIHU W. N. STARR, *Registrar.*

Superior Court, Middlesex County. February Term, 1885.

Hubert B. Gates
vs.
The Boston and New York Air Line R. R. Co. *et al.*

To the clerk of the superior court in and for the county of Middlesex:

Sir: This is to give notice that the plaintiff in the above-entitled cause appeals from the judgment of said court to the supreme court of errors, to be held at Hartford, within and for the first judicial district, on the first Tuesday of May, A. D. 1885.

Dated at Middletown this, the 17th day of April, 1885.

HUBERT B. GATES,
By S. A. ROBINSON,
His Attorney.

81 *Plaintiff's Appeal.*

Superior Court, Middlesex County. February Term, 1885.

HUBERT B. GATES
vs.
THE BOSTON AND NEW YORK AIR LINE RAILROAD COMPANY and Others.

In the above-entitled cause the plaintiff appeals from the judgment of the said court to the supreme court of errors, to be holden at Hartford, within and for the first judicial district, on the first Tuesday of May, 1885, for the revision of errors which he claims to have occurred on the trial thereof, and for reasons of said appeal assigns the following, viz:

1. The court erred in not sustaining the plaintiff's demurrer to to the defendants' answer, as stated in the defendants' first defense.
2. The court erred in not sustaining the plaintiff's demurrer to the defendants' answer, as stated in the second defense.
3. The court erred in holding that the act of incorporation of the Boston and New York Air Line Railroad Company, the foreclosure of the mortgage given to secure the first issue of bonds of the New Haven, Middletown and Willimantic Railroad Company, and the legal proceedings in connection therewith, and the conveyance of said mortgage property to the Boston and New York Air Line Company, and the lease by said last named company to the New York, New Haven and Hartford Railroad Company were and are as against the plaintiff legal and operative acts, instruments, and proceedings.
4. On the facts found the court erred in finding the issue for the defendants as a conclusion of law.
5. On the facts found the court should have found the issue for the plaintiff.

82 6. The court erred in holding that the part of the charter of the Boston and New York Air Line Railroad Company authorizing the trustee of the mortgage of the New Haven, Middletown and Willimantic Railroad Company, given to secure the plaintiff's said bonds, to convey the mortgaged estate therein mentioned to the Boston and New York Air Line Railroad Company, as therein contemplated, without the plaintiff's assent, had any constitutional validity, whereas it was unconstitutional and void.

7. The court erred in not holding that the part of said charter, which provided for the pretended transfer of said mortgage security, the discharge of said trustee, the extinction of said trust, the substitution of another party in the room of said trustee without the assent of the plaintiff, and the vesting of said mortgaged premises in the Boston and New York Air Line Railroad Company in fee to be unconstitutional and void.

8. The court erred in not holding the several provisions contained in section 4 of said charter of the Boston and New York Air Line Railroad Company, and the discharge of said trustee without the plaintiff's consent, to be unconstitutional and void, as impairing the

obligations of the contract in the plaintiff's bonds and said mortgage.

9. The plaintiff's bonds not being due, the court erred in holding that the Legislature had any constitutional authority to declare them due or to change the estate stipulated as a trust and mortgage estate into an absolute estate prior to the maturity of the plaintiff's bonds, or to authorize others so to do without the plaintiff's consent.

10. A large amount of interest coupons being due and past due on the plaintiff's said bonds, the court erred in not holding them a lien on the mortgage security and property prior to the principal sum in the bonds, according to the terms and conditions in the bonds and mortgage, as well after as before the pretended foreclosure.

83 11. The court erred in holding that the pretended foreclosure could effect any of the plaintiff's equitable rights to his mortgage security before he had elected to treat his bonds as due.

HUBERT B. GATES,
By his attorneys, S. L. WARNER AND
S. A. ROBINSON.

I certify that the foregoing appeal was filed on the 23d day of April, 1885, and Samuel L. Warner, of Middletown, is recognized in the sum of one hundred dollars, conditioned that the said Hubert B. Gates shall prosecute his said appeal to effect and pay all costs therein if he shall fail so to do; and said appeal is hereby allowed.

CHAS. G. R. VINAL, *Clerk.*

Supreme Court of Errors.

HUBERT B. GATES
vs.
THE BOSTON & NEW YORK AIR LINE R. R. CO. *et als.*

The above and foregoing is a true copy of all the files and proceedings in the above-entitled cause.

Examined and certified by

CHAS. G. R. VINAL, *Clerk.*

84 *Appealed from the Superior Court, Middlesex County.*

Supreme Court of Errors of Connecticut.

HUBERT B. GATES
vs.
THE BOSTON AND NEW YORK AIR LINE R. R. CO. *et als.*

STODDARD, *Judge:*

The New Haven, Middletown & Willimantic Railroad Company was chartered by the General Assembly of the State of Connecticut in the year 1867 for the purpose of constructing and operating a railroad from the city of New Haven to the village of Willimantic, and wholly within the territorial limits of this State. By its charter that corporation was invested with all the usual franchises and powers conferred upon railroad companies, including, of course, the right to take private property by the exercise of the right of eminent domain.

The capital stock was $3,000,000, with the privilege of in-
85 creasing the same to an amount not more than $6,000,000.

The company was authorized to borrow money to an amount not exceeding at any one time one-half of the amount actually expended for the construction and equipment of its road, and to secure repayment of the same by its bonds, with or without coupons.

Provisions is made in the charter for securing these bonds by the execution of a mortgage of the "railroad and all its property, rights, and franchises" to the treasurer of the State & his successors in office in trust for the holders of the bonds.

In pursuance of its chartered powers the company proceeded to build its railroad, and in 1869, having obtained stock subscriptions and partially completed the road, issued coupon bonds, either negotiable or not at the option of the holder, to the amount of $3,000,000, and secured the payment thereof by a mortgage, as provided by the charter.

In that mortgage it is recited that the company desired to
borrow money "for the purpose of constructing and equip-
86 ping said railroad," and proposed to make and issue such
bonds "pursuant to the power and authority to that effect in said charter contained." The bond itself states that it is secured by a "first mortgage to the treasurer of the State of Connecticut upon the railroad of said company and all its property, rights, and franchises under its charter," and stipulates that "should any of said interest coupons remain unpaid for six months after presentation and default the principal sum secured hereby shall, at the option of the holder thereof, become due immediately."

The granting clause of the mortgage also conveyed the railroad, its appurtenances, rolling-stock, and all other real and personal property, particularized at length, "which may now belong, or may at any time hereafter belong, to said company, and be used as a part of said railroad, or be appurtenant thereto or necessary for the construction, operation, or security thereof, and also all the property,
rights, and franchises of the said company under its charter,
87 and every part thereof, together with the tolls, income, issues,
and profits thereof, and all rights to receive the same, and everything necessary for the completion and operation of the road."

In the Labendum clause of the mortgage deed it is provided that the State treasurer, in his official capacity, is "to have and to hold the said property," &c., "subject to the terms and stipulations of said bonds and the provisions of the said charter under which the said company derives its powers."

Default was made in the payment of the interest, and under the terms of the bond and mortgage more than a majority in value of the bondholders elected that the principal sum should be then due, and at their instance the then treasurer of the State brought his

petition in equity to the May term, 1875, of the superior court to obtain a decree of strict foreclosure of the mortgage. Such decree was had, a majority in value of the bondholders and the creditors
being parties thereto. A plan of reorganization of the rail-
88 road had been proposed by a majority in value of the bond-
holders, which resulted in the foreclosure and the passage by the General Assembly of the act incorporating the "Boston & New York Air Line Railroad Company."

A scheme for the reorganization of the management and ownership of the railroad having been assented to by the parties in interest was referred to in the foreclosure decree.

The time for redemption expired in June, 1875, and the foreclosure thereby became absolute.

On the 8th day of June, 1875, the General Assembly incorporated the new company. The act of incorporation recites that the interest of the bonds remains unpaid since November 1st, 1872; that foreclosure proceedings in behalf of the holders of the bonds are pending, &c., and that public convenience and necessity require a considerable further expenditure to complete and equip the road.

The capital stock consisted of forty thousand shares of $100
89 each, thirty thousand of which is preferred stock and ten
thousand common stock.

The preferred stock is to be issued "only in exchange for the first-mortgage bonds of said Company, at the rate of five shares for every bond of $500 and ten shares for each bond of $1,000."

The common stock is to be issued, first, for overdue and unpaid coupons detached from the bonds; and, second, in satisfaction of certain legal and equitable claims existing against the road prior to the time the decree of foreclosure became absolute.

The charter then provided that when a majority of the bonds had been exchanged for the preferred stock, and upon some other conditions, the trustee should convey to the new corporation all his title and interest in the trust property in fee-simple, and then provided that such conveyance "shall be effectual to discharge him forever from said trust and to vest said premises with all the rights and privileges of the old corporation."

The charter then provided that no dividends shall be de-
90 clared upon the common stock until dividends have been de-
clared out of the net earnings of the railroad upon all of the thirty thousand shares of preferred stock equal to seven per cent. a year thereon from the date of the last coupons on the first-mortgage bonds, default on which was made prior to the time when the title of the trustee under the mortgage to the mortgaged premises became absolute by foreclosure. Then it is provided that the new corporation may issue mortgage bonds upon its property, under certain conditions and stipulations, by a vote of three-fourths of all the stockholders.

The plaintiff owned, prior to the reorganization scheme, bonds to the value of $2,500 and "has never personally been a party to or participated in any of said proceedings, nor authorized any one to act for him or represent him, or been personally served with notice,

nor has assented to them, and has not elected to have his bonds due, and still claims them as valid subsisting securities under
91 said original first mortgage. He was not aware that said charter had been granted to the Boston & New York Air Line Railroad Company or that said foreclosure decree had been made."

The broad claim is now made by the plaintiff that as he was not personally a party to the reorganization scheme, had no actual notice of it, and has not assented that his bonds should mature and the trustee be discharged, therefore his bonds with their coupons are outstanding subsisting obligations of the old corporation, charged upon this railroad property, and that either by an absolute sale or by operation of the railroad by the trustee said property and franchises must be appropriated to the discharge of the obligations held by him, notwithstanding that a different mode of appropriating the property in liquidation of the bonds has been agreed upon by a majority of his cobondholders and has been sanctioned by the State and by a court of equity having jurisdiction of the subject-matter.

The plaintiff's contention in this behalf rests upon his as-
92 sumption that he has a constitutional property right to have the property appropriated in the manner claimed by him.

In making this claim the plaintiff ignores or subordinates to his own claim both the private rights of his cobondholders and public rights vested in trust in the State, while upon every true theory & exposition of his contract the rights of the public are superior to his private rights, and the rights and interests of his cobondholders are equally with his own to be protected by the law. The plaintiff's argument treats this matter as one of strict legal private right of an individual creditor against or to private property of an individual debtor, instead of a claim of exceptional character upon property of peculiar nature, in which private rights of others and the right of the public exists, which must be regarded and protected.

One public right consists in the continuous use of the railroad, its franchises, and corporate property in the manner and for the
93 purposes contemplated by the terms of the charter. All these corporate franchises and this property are held subject to and charged with this obligation. It is true that the charter is permissive in its terms, and probably no obligation rests upon the corporation to construct the railroad. The option to exercise the right of eminent domain and other public rights is granted; and when that option has been made, and the corporation has located and constructed its line of track, exercising the power of the State in taking property of others, and in so locating and constructing its road has invited and obtained subscriptions upon the implied promise to construct and operate its road, has commenced to operate the road under the granted powers, thereby inducing the public to rely, in their personal and business relations, upon that state of affairs; by so accepting and acting upon the chartered powers a contract exists to carry into full effect the objects of the charter, and the capital stock, franchises, and property of the corporation stand charged
94 primarily with this trust. The large sovereign powers given by

the State to railroad corporations are granted and exercised only upon the theory that these public rights are to be used to promote the general welfare. Having exercised those powers the corporation has no right against the will of the State to abandon the enterprise, tear up its tract, and sell its rolling-stock and other property and divide the proceeds among the stockholders.

The possible effects of the exercise of such a claimed power are utter disaster to the great interest of the State, certain destruction of private property *in* which whole communities created, and existing upon the faith of the continuous use of the chartered powers are interested, and, indeed, the life of the citizen as well as his property rights are thus jeopardized. Upon principle it would seem plain that railroad property once devoted and essential to public use must
remain pledged to that use, so as to carry to full completion
95 the purpose of its creation, and that this public right, existing
by reason of the public exigency, demanded by the occasion and created by the exercise by a private person of the powers of a State, is superior to the property rights of corporations, stockholders, and bondholders.

To this effect also is the weight of authority. In the following cases are illustrations of the general principle: High on Mandamus, §§ 315, 316, 317; State *v.* Hartford & New Haven Railroad Co., 29 Conn., 538; R. R. Commissioners *v.* Portland & Oxford R. R. Co., 63 Maine, 278; Attorney Gen. *v.* West Wisconsin R. R. Co., 36 Wis., 466; The People *v.* Albany & Vermont R. R. Co., 24 N. York, 261; The People *v.* Long Island R. R. Co., 31 Hun., 127; Attorney Gen. *v.* Southern Minnesota R. R. Co., 18 Minn., 40; *In re* N. Brunswick & Canada R'y Co., 1 Pugsley & Burt. (N. B.), 667; York & North Midland R'y Co. *v.* The Queen, 1 El. & Bl., 858.

The American and English cases which seemingly doubt these propositions place their conclusion upon the construction of the particularly chartered powers and obligations.

96 In the case at bar there are special provisions of the
charter and of the bond and mortgage which indicate an intent to impose this trust characteristic upon the franchise and property of this corporation. By the charter the corporation was given power to construct and operate the whole intended line of railway, to obtain subscriptions to the capital stock, and to borrow money and issue its bonds, and mortgage its property therefor, for that special object and purpose.

The bond on its face purports to be part of an issue secured by mortgage on this railway property and franchises. The mortgage securing the bond recites that the corporation has obtained capital-stock subscriptions "for the purpose of constructing and equipping said railroad;" states that the corporation desires to borrow money and issue bonds therefor "pursuant to the power and authority to that effect in said charter;" covers not only the visible property, but
the franchise, to operate the road, and conveys the property
97 and franchises "subject to the terms and stipulations of said
bonds and the provisions of the said charter under which the company derives its power."

It is apparent that the bondholders loaned the money and took their bonds with the security with full notice that the security for the loan was first pledged to the performance of a public trust.

The necessary conclusion is that the State has a right to enforce the continuous exercise of the corporate powers and franchises for public use to the exhaustion of the value of such property and franchises, and this is true, no matter what private right may embrace the title of the property.

In this State, irrespective of legislative or judicial authority in the special instance, the effect of a foreclosure is to vest absolutely the property of the mortgagor in the mortgagee. It simply cuts of the right of redemption existing in the mortgagor, and thereafter the mortgagee stands with reference to the mortgaged property in the
same relation as did the mortgagor.
98 He has the title of the former owner of the equity and
nothing more. He holds the property subject to all charges, duties, pledges, and equities existing prior to the execution of the mortgage deed. We have not adopted the practice of selling the property upon foreclosure. Necessarily, therefore, if the trust mortgage was rightfully foreclosed, and the title vested in the trustee in trust for the first-mortgage bondholders, the trustee and the benificiaries of the trust continue to hold the property, subject to the same limitations, duties, and obligations resting upon the original corporation, including, of course, the obligation to execute the public trust cast upon the mortgaged property by devoting it to the public use for which it was created. This property could not be relieved from this trust without the acquiescence of the State. But the State has explicitly declared the public intent that the franchise and property vested in these bondholders should continue to be de-
voted to the public use declared in the original charter, and
99 has created a new corporation for that purpose. In the or-
ganization, control, and management of this new corporation and in its property and franchises the plaintiff is, by the incorporating act, entitled to share proportionately with all the other bondholders. The new corporation is an instrumentality adopted by the State, with the acquiescence of a majority of the bondholders, for carrying into effect the original design and devoting the property to the only use which the law of its creation permits; and in thus applying the trust property to the object and purposes of the trust no right of the plaintiff is impaired so long as he retains his original *pro rata* share in the trust property, subject to the execution of that trust and the expenses necessarily incident thereto.

So, too, in relation to the other bondholders, it is manifest that each bondholder enters into contract relations with each and all of
his co-bondholders. His right to appropriate the security
100 in satisfaction of his bond in such lawful manner as he
may choose is modified by the same existent right in every other holder. His absolute right of control is limited not only by the express provisions of the bond and mortgage, but also in great measure by the peculiar nature and character of the security. Canada Southern R. R. Co. *v.* Gebhard, 109 U. S. Reps., 534, 537.

"To allow a small manority of bondholders, representing a comparatively insignificant amount of the mortgage debt, in the absence of any pretence, even of fraud or unfairness, to defeat the wishes of such an overwhelming majority of those associated with them in the benefits of their common securety, would be to ignore entirely the relation which bondholders secured by a railroad mortgage bear to each other. Railroad mortgages are a peculiar class of securities. The trustee represents the mortgage, and in executing his trust may exercise his discretion within the scope of his powers. If there are differences of opinion among the bondholders as to what
101 their interests require, it is not improper that he should be
governed by the voice of the majority, acting in good faith and without collusion, if what they ask is not inconsistent with the provisions of his trust." Shaw *v.* Railroad Co., 100 U. S. Reps., 611, 612. This mortgage security is an entirety; it is indivisible, and there can be but one foreclosure of that mortgage. The bond on its face provides that "should any of the said interest coupons remain unpaid for six months after presentation and default the principal sum secured hereby shall, at the option of the holder hereof, become due immediately," and the mortgage has substantially the same provision. A majority of the bondholders exercised such option, and their bonds matured.

A statute authorized the trustee to foreclose the mortgage. That power probably resided in the trustee, irrespective of that statute. The laws of the place where a contract is made is part of the contract, as if incorporated in terms therein. The holders of these
102 bonds hold them subject to that law. When it was provided
in the bond and mortgage that the bonds were payable in twenty years from date it was also provided by the bond, the mortgage, and the law that under certain circumstances, at the option of the bondholders and the trustee, the bonds should mature and the mortgage be foreclosed before that time, thus preventing the contemplated running for twenty years. The provision that the bond should continue for twenty years an outstanding subsisting security, if any existed, was with reference to the corporation. The provision that the bonds, by the action of the bondholders, might mature before that time was in reference to the cobondholder. And while it would impair the obligation of a contract, if such contract existed, so far as the corporation is concerned, to change the time of maturity it does not have that effect when the cobondholders proceed upon their common and undisputed right to cause the bonds
103 to mature and by foreclosure to discharge the bonds by
taking the property in a legal way. *Prima facie* the foreclosure of the mortgage security operated to discharge the mortgage indebtedness. The equitable title of the property was in the beneficiaries of the trust.

The trustee was not selected because of his personal fitness or qualities; he was a State official, as are also his successors in office, designated by law as a matter of convenience and public policy, and not selected by contract of the parties to the mortgage. He had no active duties in relation to the trust except those imposed by statute and the charter, and this charter was open to repeal. In these particulars the rights of the beneficiaries under the trust to the continuance thereof are very different from the rights existing under an ordinary active trust created by act and contract of the parties.

104 When the legislative power, which upon grounds of public policy created the trust, upon like grounds willed that such trust should cease, and vested the property absolutely denuded of the trust in the beneficiaries, at the instance of a majority in value of them, no right of a dissentient beneficiary is affected.

The trust does not rest upon contract, and was created with the express reservation that the State might at will terminate it.

The purposes of the trust had been accomplished. The property had been appropriated by the foreclosure, so far as it could be by the parties, to the discharge of the bonds, and the scheme of reorganization provided for the distribution of the trust property among those entitled to it, subject to the duties and obligations to the public originally fixed upon it. This distribution was sanctioned by the judgment of a court of equity having jurisdiction. The effect of these proceedings was to vest in the bondholders all the property and the franchises of the original corporation that could be transferred by judicial proceedings.

105 But the then owners of the corporate property were not a corporation, they were simply an aggregation of common owners; but it is obviously impossible for a numerous body of part owners, widely scattered in many jurisdictions, and varying from time to time in the personal composition of that body, to operate a railroad; so it is equally inadmissible as a question of public policy that the attempt should be made. The General Assembly, therefore, provided for the new corporation, the stock of which represented the interest of the owners of the property.

This or some similar course must be pursued, and it seems to be suggested in the case [of] Stuges *v.* Knapp, 31 Verm., 1, cited by the defendants.

This was a case where the court regarded the trustees "as selected doubtless with reference to their capacity and responsibility for this very contingency, both by the corporation and the *cestui que trust*, and neither of these parties had stipulated to deal directly with the other, but only with the trustees as the responsible party." Page 55:

106 "The trustees seem to have been selected for this very office, among others, of controlling and managing the property in case of forfeiture and surrender, as trustees, for the benefit of the *cestui que trusts* in order to make it available for the payment of the bonds, both interest and principal. This must be so until some organization of the bondholders, and the acquiring of some capacity to act by a majority, or in some such way as to enable them to discharge this new class of duties thrown upon them by the forfeiture of the condition of the mortgage and the surrender of the road with its incidents and fixtures." Pages 56, 7.

To these legislative and judicial proceedings, enactments, and decrees the plaintiff was a party represented by the trustee and a ma-

jority of his cobondholders. The interests of all persons are bound by a public act of the Legislature acting within the scope of its jurisdiction. And it is manifestly impracticable that provision should be made for actual personal notice to all the bondholders
107 under railroad mortgages of judicial action in reference
thereto. The bonds are negotiable, passing by delivery from hand to hand, and scattered, in many instances, to all parts of the civilized world. Power is therefore lodged with the trustee to exercise a wide discretion in reference to the administration of his trusts, to apply to the courts for judicial action when deemed for the best interest of the *cestuis que trust*, and to bind them in relation thereto; and the familiar practice in chancery proceedings, where it is practically impossible to bring by personal notice all individuals of a numerous class into court, is to proceed with a sufficient number in that interest to properly represent it.

The designation of a State official as the trustee provides a person uninfluenced by personal considerations, independent of the action or control of any portion of the bondholders, and who may be relied upon to carry into full effect the original design of his trust. A trust of the character in question can be determined by
108 the decree of a court of equity upon proper occasion, certainly
at the request of a majority in interest of the *cestuis que trust*, and, at all events, when fortified by the concurring sovereign will of the State, and when the proportionate interests of all the owners of the property are preserved, and the estate is applied to the use for which it was created, and subject to which it is held at all times and by all persons.

A mortgage is provided for in the scheme of reorganization, to be issued by the new corporation, in the first place, to pay or secure the payment of certain sums contracted in operating the road while held in trust and, in the second, to provide for the future operation of the road by the new corporation.

It results, from the view that we have taken of the contract with the bondholders, that these are objects within the scope of their contract, and that the property is lawfully subjected to this prior mortgage to accomplish these ends. So far as the common stock
109 is concerned, it is provided by the charter that no right to a
dividend upon this stock is acquired "until dividends have been declared out of the net earnings of said railroad upon all of said thirty thousand shares of preferred stock equal to seven per cent. a year thereon from the date of the last coupons on said first-mortgage bonds, default on which was made prior to the time when the title of the trustee under said mortgage to the mortgaged premises became absolute by foreclosure." Thus is secured to the holders of the bonds the rate of interest originally contracted for, if the property should earn enough to pay that amount.

A question is made as to the power to lease. It is not necessary to dwell on this subject here; the substance of the matter is disposed of in the case of the town of Middletown against the same corporation, a companion case to this, and argued in connection with it.

This additional suggestion may be made in this case, that the charter of the first corporation gave the same power to lease this property that is given to the new corporation, and has been
110 already stated. Upon the foreclosure the franchises and property of the old corporation were taken and held by the plaintiff and his associates subject to the limitations, restrictions, and chartered powers and regulations as to the performance of public duties that were imposed upon the first corporation, and there are no facts in this case to indicate that the lease in question was not for the best interests of all concerned, both private persons and the public generally. There is no reason why, subject to legislative and judicial control and direction, the majority in interest in common property, of indivisible nature, consecrated to public use, should not so use that property as to advance the private interests in that property and secure the public welfare.

There is no error in the judgment of the superior court.

In this opinion the other judges concurred.

111 *On Appeal from the Superior Court.*

At a Supreme Court of Errors, Holden at Hartford, Within and for the First Judicial District, on the First Tuesday of October, A. D. 1885.

Present: Their honors, John D. Park, chief justice, and Elisha Carpenter, Dwight Loomis, associate judges; Sidney B. Beardsley and Henry Stoddard, of the superior court, who sat in the places of Judges Pardee and Granger, disqualified by interest.

HUBERT B. GATES, of South Orange, in the State of New Jersey,

vs.

THE BOSTON AND NEW YORK AIR LINE RAILROAD COMPANY OF Middletown; The New York, New Haven and Hartford Railroad Company of New Haven, and Alfred R. Goodrich, of Vernon, Treasurer of the State of Connecticut.

The record in this cause was transmitted by the superior court in and for the county of Middlesex at its February term, 1885, upon the plaintiff's appeal, as by a certified copy of said record on file in this court may appear, and here said parties appeared and were fully heard, and this court, having carefully inspected said record and duly considered thereon, is of opinion and doth adjudge that
112 in said record and the judgment of said superior court there is no error, and doth thereupon consider that said judgment be, and the same is hereby, affirmed; and it is further considered and adjudged that the appellees in this court in said cause recover of the appellant therein their costs, taxed at $45.00, and that the sum of $25.00 record fee be taxed against the appellants, and that execution issue therefor.

Date of judgment, December 17th, 1885.

By the court:

FREDERIC VINAL,
Ass't Clerk.

113 *Petition for Writ of Error. July 9th* 1886.

UNITED STATES OF AMERICA, *State of Connecticut:*

To the Honorable John D. Park, chief justice of the supreme court of errors of the State of Connecticut:

The petition of Hubert B. Gates, of South Orange, in the State of New Jersey, respectfully shows that on the 17th day of December, A. D. 1886, the supreme court of errors of the State of Connecticut rendered a final judgement against your petitioner in a certain cause wherein he, the said Hubert B. Gates, was complainant and plaintiff, and The Boston and New York Air Line Railroad Company, a corporation under the laws of said State of Connecticut, and located in the town of Middletown, county of Middlesex, in said State; The New York, New Haven and Hartford Railroad Company, a corporation under and by virtue of the laws of said State, located at New Haven, in New Haven county, in said State, and Alfred R. Goodrich, of Vernon, in said State, trustee, and as treasurer of said State, were defendants; to which said final judgment of said supreme court of errors the plaintiffs appeal to said court from the judgement of the superior court of said State, held in Middlesex county, for the reversal of errors of said superior court, wherein said superior court had found the issue of said cause for the defendants and rendered judgement that they recover their costs of the plaintiff, was by said supreme court of errors overruled and denied, 114 and said judgement of said superior court held to be no error, and judgement for costs rendered against the plaintiff, as will appear more fully by reference to the record and proceedings in said cause, and that said supreme court of errors is the highest court in said State in which a decision in said suit could be had.

And your petitioner claims the right to remove said judgement to the Supreme Court of the United States by writ of error, under section 709 of the Revised Statutes of the United States, because he says that he brought his cause complaining to said courts; that the New Haven, Middletown and Willimantic Railroad Company were incorporated by said State with power to construct, own, and operate a railroad from the town of New Haven to the villiage of Willimantic, and with like power to issue its bonds to the extent of $3,000,000 and secure the same by a mortgage of said railroad, its franchise, and all other property then owned or after acquired by said company; that afterwards said railroad company, in pursuance of its charter, constructed said railroad and issued its bonds to the extent of three million dollars, payable in twenty years from May 1st, 1869, with interest coupons thereto attached, payable semi-annually at 7 per cent. per annum, and secured the same by a mortgage of said railroad, the franchise of said railroad 115 company, its rolling-stock, and other property then owned or thereafter to be acquired to the treasurer of said State of Connecticut and his successors in said office, who received said mortgage in trust for said several bondholders, and who might from time to time become the holders thereof; that said

mortgage contained the provision that on failure of said company to pay the interest coupons of said bond the holder might elect that the principal sum thereof might become due, and on that written request of the holders of one-third of said bonds so issued said trustee should take possession of said railroad and all and singular said mortgage-premises and run said railroad for the benefit of said bondholder. Said The New Haven, Middletown and Willimantic Railroad Company made default of the interest on said bonds, and on the — day of May, 1875, foreclosed said mortgage and took possession of the mortgage-property. In the same month and year the Legislature of the State of Connecticut granted a charter to certain holders of said first-mortgage bonds, who had elected to make them due, by which said charter a capital of $4,000,000 was authorized, $3,000,000 of which was to be in preferred stock. The directors of said newly chartered corporation, by name The Boston & New
York Air Line Railroad Company, were authorized to issue the
116 preferred stock only to the extent of the principal of the first-
mortgage bonds, and could be issued only on condition that the holders of the bonds surrendered all coupons of the bonds accruing after the date of the foreclosure; and no stock could be issued to any bondholder except such as had elected to treat the principal of the bonds as due. By the terms of the bonds and trust deed the trust was to continue for twenty years, and by the terms and provisions of this new charter the trustee was ordered to convey the trust estate to a corporation composed of a majority of the holders of the first-mortgage bonds, which conveyance it was declared by said charter should operate to discharge the trust, and also gave that newly chartered corporation the power to lease the railroad and other property so conveyed to other railroad corporations by the consent of three-fourths of the stockholders. No provision was made for the payment of coupons of bondholders who did not elect to have their bonds due and who did not choose to surrender their bonds and take preferred stock therefor; neither was any provision made for the payment of said bonds when due by the terms thereof; common stock was to be issued for interest coupons on surrendered bonds falling due prior to the foreclosure of said mortgage. The plaintiff is the owner of and holder of some of said first-mortgage bonds to the value of $2,500, with interest coupons attached; he has never elected to have them due, and
was no party to said foreclosure or said new charter and
117 never assented to any of the proceedings or doings. After
the foreclosure above mentioned the State treasurer, trustee as aforesaid of said first mortgage, conveyed the railroad, franchise, and all other property covered by said mortgage and the decree of foreclosure aforementioned to the new corporation, the said The Boston & New York Air Line Railroad Company, who took possession and control thereof, and thereafter proposed to lease the same to The New York, New Haven & Hartford Railroad Company for ninety-nine years from September 30, 1833. By the terms of the said lease the lessor receives no part of the rental; the stipulation is to pay the same "to such persons only as shall be certified by the

lessor to have the right to receive the same by virtue of their respective holdings in the preferred stock of the lessor. While the proposed lease was pending this suit was brought by the plaintiff. The New York, New Haven & Hartford Railroad Company and the State treasurer were made parties. The lease has been executed during the pendency of said suit.

The plaintiff claimed on the trial of said cause in the State courts that the charter of The Boston & New York Air Line Railroad Company was unconstitutional and void, in so far as it assumed to give authority to the State treasurer, the trustee of said first mortgage, to convey the trust property away and to denude himself of
118 said trust without the consent of the *cestuis que trust*, and in so far as it assumed to discharge him of said trust without a like consent, that it was in violation of the Constitution of the United States in that it was an act of the State Legislature impairing the obligations of a contract.

These claims the supreme court of errors of the State of Connecticut decided adversely to the plaintiff and held the act to be constitutional, as appears by the record of the proceedings in said cause, which is herewith submitted.

Wherefore the petitioner prays the allowance of a writ of error returnable into the Supreme Court of the United States and for citation.

And your petitioner, as in duty bound, will ever pray.

S. A. ROBINSON,
Attorney for Hubert B. Gates.

Let the writ of error issue as prayed.
Dated at Hartford this 8th day of July, 1886.

JOHN D. PARK,
Chief Justice of the Supreme Court of Errors of Connecticut.

119 *Writ of Error. Filed July 9, 1886.*

Attest: FREDERIC VINAL,
Ass't Clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of errors of the State of Connecticut, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court of errors before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Hubert B. Gates, of South Orange, in the State of New Jersey, petitioner and complainant, and The Boston and New York Air Line Railroad Company, a corporation under the laws of the State of Connecticut, located at Middletown, in said State of Connecticut, The New York, New Haven and Hartford Railroad Company, a corporation likewise under the laws of said Connecticut, and located at New

Haven, in said State, and Alfred R. Goodrich, of Vernon, in said State, as he is the treasurer of said State of Connecticut, defendants, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or 120 commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Hubert B. Gates, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, 1886, next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 8th day of July, in the year of our Lord one thousand eight hundred and eighty-six.

E. E. MARVIN,
Clerk Clerk *of the U. S. Circuit Court for the*
District of Connecticut.

Allowed by—
JOHN D. PARK,
Chief Justice of the Supreme Court of Errors of Connecticut.

121 *Bond for Writ of Error. Filed July 9th*, 1886.

Know all men by these presents that we, Samuel L. Warner and Silas R. Robinson, both of the town of Middletown, in the county of Middlesex and State of Connecticut, are held and firmly bound unto The Boston and New York Air Line Railroad Company, The New York, New Haven and Hartford Railroad Company, and Alfred R. Goodrich, treasurer of the State of Connecticut, or his successors in such office, or their certain attorney or assigns, in the full and just sum of two hundred dollars, to be paid to the said The Boston and New York Air Line Railroad Company, The New York, New Haven and Hartford Railroad Company, Alfred R. Goodrich, treasurer as aforesaid, or their certain attorney, successors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 8th day of July, one thousand eight hundred and eighty-six (A. D. 1886).

Whereas lately, at a term of the supreme court of errors of
122 the State of Connecticut, in a suit depending in said court
between Hubert B. Gates, complainant, and The Boston and New York Air Line Railroad Company, The New York, New Haven & Hartford Railroad Company, and Alfred R. Goodrich, treasurer of said State of Connecticut, defendants, a judgment was rendered against said Hubert B. Gates, and the said Hubert B. Gates having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Boston and New York Air Line Railroad Company, The New York, New Haven and Hartford Railroad Company, and Alfred R. Goodrich, treasurer of said State of Connecticut, citing and admonishing — to be and appear at a Supreme Court of the United States to be holden at Washington the 2nd Monday of October next:

Now, the condition of this obligation is such that if the said Hubert B. Gates shall prosecute his said writ of error to effect and
answer all costs if he fails to make his plea good, then the above
123 obligation to be void, or else to remain in full force and
virtue.

SAMUEL L. WARNER. [L. S.]
SILAS R. ROBINSON. [L. S.]

Sealed and delivered in presence of—
DWIGHT LOOMIS.
ELISHA CARPENTER.

Approved by—
JOHN D. PARK,
Chief Justice of the Supreme Court of Errors of Connecticut.

124 I, Charles G. R. Vinal, clerk of the supreme court of errors
of the State of Connecticut in and for the county of Middlesex, holding sessions at the city of Hartford, within and for the first judicial district, do hereby certify that the foregoing contain a full, true, and complete transcript of the proceedings had in the superior court for the county of Middlesex in a certain suit wherein Hubert B. Gates was plaintiff and The Boston and New York Air Line Railroad Company, The New York, New Haven and Hartford Railroad Company, and Alfred R. Goodrich were defendants, and also all the proceedings had in this supreme court of errors on the appeal taken by said Hubert B. Gates, which appeal is now on the files thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court of errors, at Middletown, in said county of Middlesex, this 4th day of September, A. D. 1886.

[Seal Supreme Court of Errors, Con.]

CHAS. G. R. VINAL,
Clerk of the Supreme Court of Errors of Connecticut
in and for said Middlesex County.

125 UNITED STATES OF AMERICA:

Supreme Court of Errors of the State of Connecticut.

I, John D. Park, chief justice of the supreme court of errors of the State of Connecticut, do hereby certify that Charles G. R. Vinal is clerk of the supreme court of errors of the State of Connecticut in and for the county of Middlesex, holding sessions at the city of Hartford, within and for the first judicial district; that the signature of Charles G. R. Vinal to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all his official acts as such.

In testimony whereof I have hereunto set my hand, at the city of Hartford, the sixth day of September, A. D. 1886.

JOHN D. PARK,
Chief Justice, Supreme Court of Errors of Connecticut.

126 Filed July 16, '86.
Attest: FREDERIC VINAL,
Ass't Clerk.

The United States of America to The Boston & New York Air Line Railroad Company, a corporation — under & by virtue of the laws of the State of Connecticut, & located at Middletown, Middlesex county & said State; The New York, New Haven & Hartford Railroad Company, a corporation — under & by virtue of the laws of the State of Connecticut, & located at New Haven, in New Haven county & said State, & Alfred R. Goodrich, of Vernon, in said State, as treasurer of the State of Connecticut, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of errors of the State of Connecticut, wherein Hubert B. Gates, of South Orange, in the State of New Jersey, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John D. Park, chief justice of the supreme court of errors of the State of Connecticut, this 8th day of July, in the year of our Lord one thousand eight hundred and eighty-six.

JOHN D. PARK,
Chief Justice of the Supreme Court of Errors of Connecticut.

127 On this sixteenth day of July, in the year of our Lord one thousand eight hundred and eighty-six, personally appeared John I. Hutchinson, sheriff of Middlesex Co., Conn., before me, the subscriber, Frederic Vinal, assistant clerk of the superior court for said county, and makes oath that he delivered a true copy of the within citation at the usual place of abode of T. L. Watson, secretary

of the Boston & New York Air Line R. R. Co., William D. Bishop, Jr., secretary of The New York, New Haven and Hartford R. R. Co., & with Alfred R. Goodrich.

JOHN I. HUTCHINSON.

Sworn to and subscribed the 16th day of July, A. D 1886.
[Seal Supreme Court of Errors, Con.]

FREDERIC VINAL,
Assistant Clerk of the Superior Court for Middlesex County.

FAIRFIELD AND TOLLAND COUNTIES, *ss:*

BRIDGEPORT AND VERNON, *July* 15*th*, 1886.

Then I left true and attested copies of the foregoing citation each at the usual place of abode of T. L. Watson, secretary of The Boston and New York Air Line Railroad Company, and at the usual place of abode of William D. Bishop, Jr., secretary of the New York, New Haven and Hartford Railroad Company, both at said town of Bridgeport; and on the same day I also left a like true and attested copy hereof with Alfred R. Goodrich at said town of Vernon.

Attest: JOHN I. HUTCHINSON,
Sheriff Middlesex County, & Sheriff's Deputy in the Counties of Fairfield & Tolland.

Fees:

3 copies	1 50
4 endorsements	60
Service	36
Travel to serve, & return	15 10
	$17 56

Supreme Court U. S., clerk's office. Received Sep 11, 1886.

Endorsed on cover: Connecticut supreme court of errors. No. 1097. Hubert B. Gates, plaintiff in error, *vs.* The Boston and New York Air Line Railroad Company, The New York, New Haven and Hartford Railroad Company, and Alfred R. Goodrich, as treasurer of the State of Conn. Filed October 9, 1886.

DEC. 21 1886
JAMES H. McKENNEY,
CLERK.

122-646

(1)

Supreme Court of the United States.

OCTOBER TERM, 1886.

HUBERT B. GATES
vs.
THE BOSTON AND NEW YORK AIR LINE RAILROAD CO., *et als.*
} No. 1097.

Motion to dismiss the writ of error and to affirm the judgment, and brief for defendants in error.

SIMEON E. BALDWIN,
of counsel for defendants in error.

Hoggson & Robinson, Law Printers, 82 Church Street.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1886.

HUBERT B. GATES *vs.* THE BOSTON AND NEW YORK AIR LINE RAILROAD CO., *et als.*	NO. 1097. WRIT OF ERROR.

MOTION TO DISMISS.

The defendants in error move that the above entitled writ of error may be dismissed for want of jurisdiction, and refer to their brief filed herewith, for a statement of the facts on which this motion rests.

SIMEON E. BALDWIN,
attorney for the defendants in error.

MOTION TO AFFIRM.

The defendants in error move that the judgment, brought under review by the above entitled writ of error, may be affirmed, because it is manifest on the face of the record that said writ was taken for delay only, and that the question on which the jurisdiction depends is so frivolous as not to need further argument; and join this motion with their motion to dismiss said writ, as on file.

SIMEON E. BALDWIN,
attorney for defendants in error.

SUPREME COURT OF THE UNITED STATES,

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HUBERT B. GATES *vs.* THE BOSTON AND NEW YORK AIR LINE RAILROAD CO., *et als.*	NO. 1097. WRIT OF ERROR.

Brief on motions to dismiss for want of jurisdiction, and to affirm.

STATEMENT.

This is a writ of error to the Supreme Court of Errors of the State of Connecticut.

The original action was brought in 1882 by the plaintiff in error as a bondholder under a mortgage executed by the New Haven, Middletown and Willimantic Railroad Co., against the Boston and New York Air Line Railroad Co. and the New York, New Haven and Hartford Railroad Co. This complaint was amended March 2, 1883, so as to make it substantially a new one, (Record pp. 4, 7) and the State Treasurer, brought in as a co-defendant. As amended it stated this case: that the New Haven, Middletown and Willimantic Railroad Co., in 1869, duly mortgaged its road and franchise to the Treasurer of the State and his successors in office, in trust to receive a $3,000,000 issue of bonds; that in 1875, the interest on the bonds having been defaulted, the Treasurer took possession, and soon aftewards, on July 8, 1875, fraudulently conveyed the mortgaged property and franchise to the Boston and New York Air Line Railroad Co., which now fraudulently claims to be the absolute owner thereof, and denies that the plaintiff, who owns bonds and coupons secured by said mortgage, and not yet due and payable, has any interest in the property, and intends to let it for 99 years to the New York, New Haven and Hartford Railroad Co.; that the Boston and New York Air Line Railroad Co. founds its claims on a charter which "was obtained without the knowledge or consent of the plaintiff, and is as to him and all other non-consenting bondholders, unconstitutional and void;" that under this charter said Company claims to appropriate the income of the mortgaged property for 99 years to the payment of dividends on its preferred stock; that all said acts of said companies are being done under a conspiracy to cheat and defraud the plaintiff, and deprive him of his mortgage security; and that he had no knowledge of said acts until on or about the date of his complaint. The relief prayed for was the appointment of a receiver, an injunction against the proposed lease, and an account.

The New York, New Haven and Hartford Railroad Co. filed a general denial (p. 6.)

The Boston and New York Air Line Railroad Co. and the State Treasurer filed an answer (to the complaint as amended) setting up two defenses (p. 21.)

The first defense was that the State Treasurer in 1875, obtained a decree of strict foreclosure in a proper Court of Equity, in a suit brought by him as trustee under the mortgage, and to which a majority of the bondholders were personally parties; that pending the suit a scheme of foreclosure and re-organization was "agreed on by all parties in interest and approved by said Court in said cause," which scheme was enacted into law by the charter of the Boston and New York Air Line Railroad Co.; that the foreclosure decree was in conformity to this agreement, to which suit and decree the plaintiff was a party by representation, and whereby his rights were fully concluded; that the conveyance to said defendant from the State Treasurer was pursuant to the charter; and that there had been no fraud or wrong practiced or intended.

The second defense was this:

> "The right of action for the cause stated in the complaint, being dependent on the validity of the said defendant's charter and its title under said deed of July 8th, 1875, did not accrue within six years next before the commencement of this action, but accrued more than seven

years before the same, and for the plaintiff's delay and laches no excuse is shown; whereby his suit is barred."

The plaintiff demurred to most of the first defense, and to the whole of the second defense (p. 22.)

By the Practice Act and Rules of Connecticut, the making up of issues is regulated as follows:

> "SEC. 12. No issue need be joined on a demurrer, nor need any pleadings be formally closed either to the Court or to the jury; but the denial of any material allegation shall constitute an issue of fact."

Connecticut Practice Book, p. 17, Rule IV., Sec. 12.

By the Connecticut practice, the trial court is required to find the facts on which its decree is based. The Rules are as follows:

> "SEC. 1. When all the material allegations put in issue in any action, whether brought for legal or for equitable relief, are found for either plaintiff or defendant, the finding of the issues for the plaintiff or defendant, as the case may be, (reference being made to the pleadings), will be deemed equivalent to a finding that all his material allegations, which were put in issue, are true, and will be a sufficient compliance with Section 30 of the Act. But when only a part of the material allegations put in issue by the pleadings are found for the prevailing party, the judgment must indicate the particular facts found."

> "SEC. 3. When either party requests a finding specially setting forth the facts on which the final judgment is founded, and any one of such facts is simply a bare con-

clusion of law from more detailed or subordinate facts, as for instance, in cases of constructive fraud, the finding must specially set forth the subordinate facts from which, as such conclusion of law, the Court finds the principal facts. In such case, the finding should be such as distinctly to show any conclusion of law, thus drawn. But when a material fact is found from more detailed or subordinate facts, not as a conclusion of law, but as a conclusion of fact, only the main or resulting fact should be set forth in the finding."

Rules as to Judgments, Rule I, p. 1.

The decree of the trial Court sets forth that the Court "finds the issues in favor of the defendants," and then, at the request of the plaintiff, specially sets forth the facts found. These mainly concern the questions of notice and laches. The decree then concludes as follows (p. 25):

"The said Acts of incorporation, mortgage, foreclosure, conveyance, and lease were and are as against the plaintiff legal and operative acts, instruments and proceedings.

As a conclusion of law from these facts, the Court finds the issues for the defendants."

Some of the issues thus found for the defendants were issues of law and others issues of fact.

The New York, New Haven and Hartford Railroad Co. denied all the allegations of the complaint (p. 6.) The other defendants denied part of them, and among others, paragraph 13, which anticipated the defense of laches by alleging that the plaintiff had no knowledge of the things complained of "until on or about the date of his complaint" (p. 10.)

The facts specially set forth in the finding as to laches show that this allegation was untrue; and the general finding of all the issues for the defendants disposes of the issue of law as to laches, raised in the second defense, in their favor.

The Supreme Court of Errors to which the cause was next appealed, has jurisdiction only to review errors of law. Among the reasons of appeal filed by the plaintiff (p. 54) are, that the "Court erred in not sustaining the plaintiff's demurrer to the defendants' answer as stated in the second defense;" and in holding the charter of the Air Line road, and the foreclosure of the mortgage to be "as against the plaintiff legal and operative acts, instruments and proceedings," and in not holding certain parts of the charter to be "unconstitutional and void, as impairing the obligations of the contract in the plaintiff's bonds and said mortgage."

The only recorded judgment of the Supreme Court of Errors is that there is "no error" (p. 64), and therefore that the judgment of the Court below be affirmed. The opinion filed in the Supreme Court of Errors is, however, sent up with the transcript, in which certain particular grounds are assigned for affirmance.

The defendants now move, in this Court, that the writ of error be dismissed for want of jurisdiction, and join with it a motion to affirm, on the ground that the question on which the jurisdiction depends, if jurisdiction there be, is so frivolous as not to need further argument.

POINTS.

I.

No federal question is necessarily presented on the record.

This Court has no jurisdiction, unless in the judgment of the Supreme Court of Errors of Connecticut there was drawn in question the validity of a statute of or an authority exercised under the State of Connecticut, on the ground of their being repugnant to the constitution of the United States, and the decision was in favor of their validity.

U. S. Rev. Stat., § 709.

"It must be that such a question was necessarily involved in the decision, and that the State Court would not have given judgment without deciding it."

Lawter vs. *Waller*, 14 How., 149.

The only question in the Supreme Court of Errors was whether the Superior Court had mistaken the law, on the facts found in its decree. The Supreme Court of Errors sits for the correction of errors of law only. It cannot pass upon matters of fact, nor upon questions of law, except such as were presented in the Superior Court, and are brought up for revision. An "appeal," so-called, like that in the case at bar, really operates only as a writ of error.

Dudley vs. *Deming*, 34 Conn., 169, 174.

The statute governing such appeals is as follows:

"If the Court to which such appeal is taken shall find errors in the rulings or decisions of the Court below, it shall reverse the judgment or order a new trial, unless such errors are immaterial, or such as have not injuriously affected the appellant; but no errors shall be considered on an appeal, unless they are specifically stated in the reasons of appeal, and unless it also appears in the record that the question was distinctly raised at the trial, and was decided by the Court adversely.

Public Acts of 1882, p. 146, sec. 8.

The Superior Court had before it two distinct defenses to the action. The first defense involves the constitutionality of the Air Line charter of 1875, and the proceedings taken under it, and also the question whether the plaintiff was in a position to challenge its constitutionality. The second defense was the statute of limitations and laches. An adverse decision to the plaintiff as to either defense was fatal to his case. Such an adverse decision was rendered as to both.

It was therefore not sufficient ground of error, under the Connecticut practice, to show that one of these defenses ought to have been overruled, unless it could be shown also that the other ought to have been overruled. We might grant that the law was unconstitutional, and still the judgment would be good, if laches were proved.

It does not appear on which of the two grounds of defense, the decree of the Superior Court was based. The issues on both are found against the plaintiff, and no opinion was filed in that Court.

> " When it does not appear on which of the two grounds the judgment was based, then if the independent ground on which it might have been based was a good and valid one, sufficient of itself to sustain the judgment, this Court will not assume jurisdiction of the case."
>
> *Klinger* vs. *Missouri*, 13 Wall, 263.

The opinion filed in the Supreme Court of Errors cannot be taken as determining the question decided by that Court.

The Rules of this Court (Rule 8, sec. 2) which requires the clerk of the Court below, "to annex to and transmit with the record, a copy of the opinion or opinions filed in the case," does not make them a part of the record of that Court. Such opinions are no part of the record of the Supreme Court of Errors, in Connecticut practice.

Prior to the promulgation of this Rule (April 28, 1873), it had been repeatedly held by this Court, that except in cases of a civil law character coming up from Louisiana, the opinion of the Court below could not be looked at to determine whether a federal question was raised.

"It ought to appear from the record and not from any opinion of the Court, that a federal question was raised, in order to give this Court jurisdiction of the case."

Insurance Co. vs. *The Treasurer*, 11 Wall, 208.

Even if the Chief Justice of the State Court, in allowing a writ of error, formally certified that a federal queston was drawn in question, and decided, this Court took no notice of it.

Railroad Co. vs. *Rock*, 4 Wall, 177, 178, 180.

We submit that the rule of April 28, 1873, has not changed the practice in this respect. The opinion is sent up, so that this Court can refer to it, if it think proper, for assistance in determining the merits of the cause, but not for assistance in determining whether it has jurisdiction, or not. Jurisdiction must be shown by the pleadings and judgment, not by an opinion filed long after the judgment.

This seems to be the view taken by the Court in the first case, after the adoption of the rule of April 28th, 1873, in which its effect came in question.

Murdock vs. *Memphis*, 20 Wall, 590, 633.

In the next case of this kind, the opinion of the State Court showed that the constitutional question had been considered and decided adversely to the plaintiff in error, but the Court dismissed the writ of error, this question not being "necessarily involved in the decision."

Moore vs. *Mississippi*, 21 Wall, 636, 638.

And in the most recent instance in which the operation of the rule has been discussed, it is again said that the record, and not the opinion, should settle the jurisdiction.

Otis vs. *Oregon Steamship Co.*, 116 U. S., 548.

It is true, that in the case at bar, the record itself shows plainly that a constitutional question was raised by the plaintiff in error; but it also shows that there were other issues raised and adjudged against him, which are decisive of the case. Not to mention those as to his acquiescence in the legislation he now complains of, expressed by his representative, the State Treasurer, as his trustee, the distinct defense of laches, which went to the whole action, was found for the defendants in error, (Record, pp. 23, 25), and the principal part of the finding and decision of the Superior Court is devoted to a statement of the plaintiff's excuses for his laches, and the Court's opinion of them.

II.

If the opinion of the Supreme Court of Errors can be read to support the jurisdiction, it fails to support it.

The opinion of the Supreme Court of Errors does not discuss the defense of laches. It finds that there was "no error in the judgment of the Superior Court," (Record, p. 64), but it reviews only the questions raised by the first defense. It holds that the charter, mortgage, and bonds of the New Haven, Middletown & Willimantic Railroad Co., under which the plaintiff in error claims, all charge the franchises and property of the corporation with a trust for public use and convenience, (Record, pp. 58, 59), of which he had full notice, (p. 60); that the foreclosure and reorganization charter are simply an exercise by the State, with the assent of a majcrity of the bondholders, of its original right to enforce the execution of this trial by an apppropriate instrumentality, (p. 60); that the foreclosure aud reorganization, were authorized by the laws existing when the bonds and mortgage were created, (p. 61); that, *prima facie*, the foreclosure discharged the indebtedness, (p. 61), that the trust of the mortgage trustee was created, not by contract, but by statute, (p. 61), and when its purposes were accomplished, could be properly discharged, by vesting the foreclosed property and franchises in the beneficiaries on equal terms, under the direction of a Court of Equity, (pp. 62, 63), and that the plaintiff in error was a party properly represented in the foreclosure suit and before the legislature, and bound by the result of those proceedings, (p. 63).

In a word, the Court held that the foreclosure and charter of the foreclosing bondholders was merely the ordinary exercise of the right of the State to regulate the execution of a trust created by law, by due process of law, and that nothing was done which was not authorized by the law existing when the bonds were issued and the mortgage made.

Such a decision as to the equitable remedies affecting trusts, which were established in Connecticut before the the mortgage and bonds came into existence, and recognized in the bonds themselves, is not a decision that this Court can review. It is the exposition of a State law, antecedent to the contract with the plaintiff, which is evidenced by his bond.

Kennebec Railroad vs. *Portland Railroad*, 14 Wall, 23.

The mortgage under which the plaintiff claims (Exhibit A, Record, p. 10), was made to the Treasurer of the State of Connecticut, and his successors in office, pursuant to the requirements of its charter, and to the General Statutes of the State.

These statutes provided that any railroad company might issue bonds to a certain amount, and

> "secure said lands by a mortgage of its railroad, and all its property, rights and franchises under its charter, or of any part thereof, by deed duly executed by its president, under the corporate seal, to the treasurer of the State, and his successors in office, in trust for the holders of said bonds."

Gen. Statutes of Conn., Revision of 1866, p. 195, Sec. 511.

They further provided for his entry into possession, upon a default, and that in such case

> "he may proceed at his discretion, in the Superior Court, in any county in which such railroad, or any part thereof is located, to foreclose the said railroad company and all subsequent incumbrancers, for the use cf the bondholders, or other creditors for whom he acts; and such Superior Court may limit the time for the redemption of ihe mortgaged property, as in the ordinary proceedings for the foreolosure of real property."

Gen. Stat., Rev. of 1866, p. 196, Sec. 515.

Judicial relief in Connecticut is still administered partly by the courts and partly by the legislature.

"We may say that our legislature has assumed, since the adoption of our Constitution, to have a reserved power to grant relief for good cause shown in cases where there is no explicit prohibition in the Constitution, and where under existing laws it is not in the power of any Court to grant relief. There is now on our statute book (General Statutes, Revision of 1875, p. 79, Sec. 3) an Act first passed in 1784, which provides that 'no petition shall be preferred to the General Assembly, for any relief which any court has power to grant.' This by clear implication embodies the sense of successive legislatures for ninety-four years, that if no Court has power to grant relief, and justice requires it, and the Constitution does not forbid, application may be made to the legislature even though it calls for the exercise of powers judicial in their nature."

Wheeler's Appeal, 45 Conn., 306, 317.

The legislature has, from an early period to the present time, freely exercised the power of granting equitable relief in exceptional cases.

"The legislature of Connecticut has the power of an English Court of Chancery to direct a sale of real estate devised to charitable purposes—even though it be provided by the devise, that the estate shall never be sold—in cases where lapse of time, or changes in the condition of the property, or circumstances attending it, make it prudent and beneficial to the charity, to alien the specific land, and invest the proceeds in other securities; taking care, however, that no diversion of the gift be permitted."

Stanley vs. *Colt*, 5 Wall, 119.

Into a State with this system of remedial justice, the plaintiff in error came with his money to lend it to a quasipublic corporation, chartered to fulfil a public trust, and to lend it on a security taken to a public officer, as such, who had power to "proceed at his discretion" to foreclose the mortgage, upon a default, by a strict foreclosure.

The opinion of the Supreme Court of Errors in the case at bar holds that the various steps in the foreclosure and reorganization were fully sanctioned by the law of the State existing when the bonds were issued, and forming a part of the contract between the bondholder and the company; the particular legislation which was had being merely a customary form of exercising an ancient jurisdiction, (Record pages 61–63.)

In the Maine case last cited the State Court took a similar view of the State legislation complained of, and a writ of error was dismissed. A railroad mortgage made in 1852, was foreclosed in conformity with a statute passed in 1857. The company which made the mortgage sought to redeem on the ground that the statute impaired the obligation of the contract. The State Court held that the statute did not impair the obligation of the contract, but that the foreclosure was valid without reference to it, "because the method pursued was in strict conformity to the mode of foreclosure authorized, when the contract was made, by the laws then in existence." The motion to dismiss was sustained by this Court, with these remarks:

"Now if the State Court was right in their view of the law, as it stood when the contract was made, it is obvious that the mere fact that a new law was made does not impair the obligation of the contract. And it is also clear that this Court cannot inquire whether the Supreme Court of Maine was right in that opinion."

Kennebec Railroad vs. *Portland Railroad*,
14 Wall, 25.

And when a few years later a creditor of the old company sought to set aside the foreclosure by suit in the Circuit Court, his delay of seven years was deemed fatal to his case, though the objection was not raised by the defendant's pleadings.

Sullivan vs. *Portland & Kennebec Railroad Co.*, 94 U. S., 806.

III.

If the Court has jurisdiction of the cause, the judgment should be affirmed.

We do not propose to argue at any length, the motion to affirm.

If the Supreme Court of Errors had held the constitutional point well taken, they would still have been obliged to find "no error" in the judgment of the Superior Court, because the second defense of laches was conclusively established by that judgment, and was properly pleaded as a full defense to the whole action.

And the disposition of the first defense was manifestly proper, as fully shown in the elaborate opinion of the Court below. (Record, pages 55–64,)

Gilfillan vs. *Union Canal Co.*, 109 U. S., 401, 403.

The scheme of reorganization in the case in bar, did not substitute one trustee for another, under a continuing trust, as in *Knapp* vs. *Railroad Co.*, 20 Wall, 117, 123. It discharged the trustee, and terminated the trust, in the only way practicable or customary, in Connecticut, where the process of foreclosure by sale is unknown.

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of counsel for defendants in error.